GOVERNMENT:
ITS ORIGIN, GROWTH AND FORM IN THE UNITED STATES

LANSING & JONES

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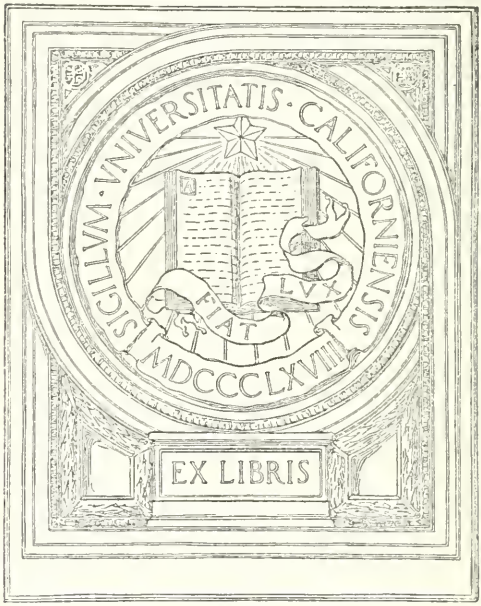

GOVERNMENT

ITS ORIGIN, GROWTH, AND FORM IN THE UNITED STATES

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PREFACE

The majority of text-books on civil government in the United States have followed one of two methods in their treatment of the subject. One introduces the student directly to existing institutions and explains their functions, with little or no attempt to show their origin. The other begins with the more imperfect forms of local government and builds up from these to the federal system. However logical either of these methods may appear, experience has shown that the average student, conversant with American history and not that of his State, is much more familiar with the form and powers of the general government than he is with those of local governments. It was this fact that induced the authors to prepare this work on the Federal Government, in the hope that the student having thus gained an acquaintance with this, the more perfect system, would be better equipped to take up the study of his more complex State and local governments.

Furthermore, it was considered of the utmost importance, before discussing the present federal system, to familiarize the student with those general principles upon which all governments rest, and with the source and growth of free institutions in England and her colonial possessions in America. This is done in Parts First and Second. The abstract principles are defined and

explained by appropriate illustrations, and the growth of civil liberty is traced historically from its Anglo-Saxon origin to its final development in the Constitution of the United States. By these means the student has had an opportunity to apply his knowledge of American history, to understand the causes which led to the Revolutionary War and their logical result, to appreciate the force of the Declaration of Independence and the reasons for the failure of the Confederacy. He should understand why a new constitution was necessary, upon what principles it should rest, and what should be the general form and powers of the government to be established. But, if the time devoted to civics is too brief to warrant this historical examination, Part Second may be passed over without affecting the treatment of the national government.

Part Third contains a critical and analytical study of the Federal Constitution, with such historical references as are necessary to explain its provisions. The sections and clauses are inserted in the text for the convenience of the student and to insure careful study of the language of the Constitution. Unless these are so clear and simple as to demand no explanation, they are analyzed and commented on in the light of the most recent judicial decisions, official interpretations and opinions of prominent jurists; and when of peculiar interest, the language of these authorities is quoted. Besides this critical examination of the Constitution, the practical workings of the different branches of the Federal Government are explained, with especial reference to the extension or modification of their functions by statute, custom and practice.

Part Fourth contains a concise review of the principles of international and municipal law. Jurisprudence is not properly a branch of civics, but the conduct of the foreign and domestic affairs of the nation is so interwoven with questions of law that a general knowledge of this subject is essential to a right understanding of government in the United States.

The purpose of the whole work is to furnish the student with principles and facts which will be of practical value to him in the exercise of the rights of citizenship, and to present them in such a way as to impress upon him the responsibilities which rest upon every citizen of the Republic in the performance of his public duties.

The authors desire to express their thanks for the assistance and kindly criticism which they have received during the preparation of this work from Mr. Justice Harlan, Honorable John T. Morgan, Honorable John W. Foster, Andrew H. Allen, Esq., James M. Milne, Esq., and Principal William K. Wickes.

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ABBREVIATIONS

Am. & Eng. Ency. of Law, American and English Encyclopedia of Law.

Blackstone, Commentaries.

Bouvier, Bouvier's Law Dictionary.

Cooley, Cooley on Constitutional Law.

Int. Dict., Webster's International Dictionary.

Kent, Commentaries on American Law.

Maine, Ancient Law.

Rutherford, Institutes.

Story, Commentaries on the Constitution.

Tomlins, Tomlins' Law Dictionary.

Va. Cas., Virginia Cases.

Vattel, The Law of Nations.

Italics in quotations are the authors'.

PART FIRST.

THE ORIGIN AND DEVELOPMENT OF GOVERNMENT.

CHAPTER I.

PRINCIPLES OF GOVERNMENT.

Society. — If a man did not come in contact and have relations with other men, he might live where he pleased and do what he wished; that is, his actions would be unrestricted, except as he is responsible to God. He is in a state of *Natural Liberty*. Man, however, has constant intercourse with his fellows, and his actions are affected by or interfere with theirs; thus his freedom to act as he wishes limits or is limited by the freedom of another just so far as their actions conflict. The sole inhabitant of an island would be unrestricted in his action, but two individuals would find circumstances in which their wishes would conflict, and one or the other would have to yield. This relationship is called *Society*, in which man's Natural Liberty is limited and becomes *Civil Liberty*.

Natural Liberty: The power of acting as one thinks fit, without any restraint or control, unless by the law of nature. — *Blackstone.*

Civil Liberty: Natural Liberty so far restrained by human laws as is necessary and expedient for the public good. — *Minor.*

State. — As men sustain such relations to one another, those living in one place or region unite for the purpose

of *common* protection and interest. Such a union is termed a *State* or *Nation*, and by some writers a *Civil Society*. A state is therefore formed upon the principle of coöperation. Thus, a country attacked by enemies would be more successfully defended if the inhabitants united their efforts of resistance than if each attempted to protect only his own dwelling.

State; Nation: A body politic, or society of men, united together for the purpose of promoting their mutual safety and advantage by the joint efforts of their combined strength. *Cooley; Bouvier.*

Civil Society: By *civil society* is usually understood a state, a nation or body politic. *Rutherford.*

Rights; Sovereignty; Law. — In every State every individual possesses certain well-defined powers or privileges, called *Rights*, which entitle him to conduct himself within certain limits in such a manner as will promote his happiness or profit. Thus, every man is entitled to the rights of "life, liberty and the pursuit of happiness"; that is, to live and to live as he pleases, to go where he pleases and to act as he pleases, provided he does not interfere with the rights of others. In order to protect the individual in the exercise of his rights and to limit the actions of each so as to give the greatest freedom to all, certain rules of conduct, called *Laws*, are necessary. To be effective, these laws must originate from a competent source; and the individual or body of individuals having the supreme power to declare the laws in a state is called its *Sovereign*.

Right: That which anyone is entitled to have, or to do or to require from others within the limits prescribed by law. *Kent.*

Rights are divided into:

A.—Political—The right to take part in the government, such as to vote and hold office.

B.—Civil.

a.—Absolute or Natural.

The right of Life.
The right of Liberty.
The right of Property.
} These belong to a person from birth.

b.—Relative.

1—Public—The right of protection by the government.

2—Private—Which grow out of the relations of
Husband and wife,
Parent and child,
Guardian and ward,
Master and servant.

Sovereign: The person, body or state in which independent and supreme authority is vested. *Int. Dict.*

Sovereignty: The union and exercise of all human power possessed in a state; it is a combination of all power; it is the power to do everything in a state without accountability. *Story.*

That public authority which commands in civil society and orders and directs what each is to perform, to obtain the end of its institution. *Vattel.*

Law: A rule of civil conduct prescribed by the supreme power in a state. *Bouvier.*

A rule of life. *Maine.*

Law in its most general and comprehensive sense signifies a rule of action; and it is applied indiscriminately to all kinds of action, whether animate or inanimate, rational or irrational. Thus we say, the laws of motion, of gravitation, of optics or mechanics, as well as the law of nature and of nations. And it is that rule of action which is prescribed by some superior, and which the inferior is bound to obey. *Blackstone.*

When Law is applied to any other object than man, it ceases to contain two of its essential ingredients, *disobedience* and *punishment. Tomlins.*

Government.—A law will not accomplish its purpose unless all the individuals in a state, to whom it applies, obey it in the same way; and this equal obedience is, therefore, compelled by the sovereign or representatives of the sovereign. The province of a sovereign is, then, to make and enforce, directly or indirectly, the

laws of a state ; and this act is termed *government.* The word "government" is used not only to express the *acts* of sovereignty, but also the *agents* by means of which the sovereign performs these acts. Thus, in the United States the sovereignty is vested in the people ; the President, Congress and Courts are the instruments to execute the sovereign's will, and are called "the Government."

GOVERNMENT (first sense): The control, direction and regulation of public or private affairs. *Am. & Eng. Ency. of Law.*

GOVERNMENT (second sense): That institution or aggregate of institutions by which a state makes and carries out those rules of action which are necessary to enable men to live in a social state, or which are imposed upon the people forming a state. *Bouvier.*

Powers of Government.—As the sovereign's power is supreme, a government's duties can be determined and its authority limited only by the sovereign ; and a government, being the representative of the sovereign, has power over the life, liberty and property of every individual in the state ; but this sovereign power can be *justly* exercised only under certain conditions.

The conditions under which a government may *justly* deprive him of these rights are :

1. When a person wrongfully interferes with another's rights, the government may compel him to forfeit a part or all of his own rights. All disobedience to the laws is such an interference ; and the forfeiture imposed by the government is termed *Punishment.*

2. When the state is in danger, the government may require the life, liberty or property of any member of the state. In case of war the enforced service in the army (called *conscription* or *draft*) and the taking and using an individual's property without his consent and

without paying him for it (called *confiscation*) are examples.

The rights of a state to preserve social order and to protect itself are superior to the rights of any individual member.

Branches of Government.—A government, whatever its form may be, executes the will of the sovereign by the exercise of three distinct functions, known as Legislative, Judicial and Executive.

The *Legislative* function consists in *making* laws ; that is, in announcing the sovereign will in regard to any matter.

The *Judicial* function consists in *interpreting* the laws in their application to individual cases.

The *Executive* function consists in *enforcing* the laws.

These distinct functions may be exercised by the government as a whole, or by two or three separate branches, which are named after the functions which they perform.

In nearly all states the executive head selects men to act as advisers and to share in the duties of enforcing the sovereign's will. These advisers are called a *Council of State*, a *Ministry*, or a *Cabinet*. In some states, as in England, this advisory body is substantially a committee of the dominant party in the legislative branch and possesses the executive authority. In such cases the Ministry is termed the "Government."

Constitution. — A government's authority may be limited and defined by certain principles, which have been declared or accepted by the sovereign. These principles of government are termed a *Constitution*. Constitutions are either unwritten, as that of Great Britain, or

written, as those of the United States and the German Empire. In a state which has a written constitution the word is used not only to indicate the principles of government, but also the document itself.

CONSTITUTION: A fundamental law or basis of government. *Story.*

The fundamental laws of a state, directing the principles upon which the government is founded and regulating the exercise of the sovereign powers. *Bouvier.*

That by which the powers of government are limited. 1 *Va. Cas.* 24.

WRITTEN CONSTITUTIONS are the product of modern ideas of civil government. Although the Grecian cities and some of the Italian republics possessed written laws in the nature of constitutions, it may be said that the "Fundamental Orders of Connecticut," drafted by Thomas Hooker and his friends in 1639 and substantially confirmed by the charter granted by Charles II. in 1662, was the first written constitution providing a complete form of government. And so republican was this instrument that it remained in force for forty years after Connecticut became an independent state.

CHAPTER II.

CLASSIFICATION OF GOVERNMENTS.

Divisions.—In considering the different forms of governments there are two general divisions: Single Governments and Confederated or Federal Governments.

A *Single Government* is that of a single state in which there is a single sovereignty.

A *Confederated* or *Federal Government* is that of a Confederacy or Union. A *Confederacy* or *Union* is formed by an agreement between two or more single, independent states for mutual protection and benefit, by which each state retains a portion of its sovereign power, but surrenders to the confederacy as much as is necessary to carry out the purposes of the agreement. The word "confederation" is used commonly as a synonym of "confederacy," but in its strict sense the former is the *agreement* to unite, and the latter the *resulting union*.

SINGLE GOVERNMENTS.

Basis of Classification.—Single Governments are commonly classified according to the character of the sovereignties which they represent.

Classification.—From the time of the earliest writers, governments have been divided into three general classes: Monarchies, Aristocracies and Democracies.

These are based, respectively, upon the three general forms of sovereignty—(1) by an individual, (2) by a class of individuals, and (3) by all the members of a state.

1. **Monarchies.**—A Monarchy is a government by one person, in whom is the sovereignty. The ruler—that is, the individual who governs—is called a monarch, sovereign, king, emperor, etc., while those over whom he rules are called his *subjects*, and possess no part of the sovereignty. Among these is a certain class of individuals, termed *nobles*, who have been granted special privileges by the sovereign. They bear such titles as marquis, earl, viscount, baron, etc., and constitute the *nobility* or *aristocracy* of the country.

Principalities and Duchies are small monarchies, whose sovereignties are in princes and dukes.

a. Division as to Power.—Monarchies are divided into two classes: Absolute Monarchies and Limited or Constitutional Monarchies.

Absolute Monarchy.—An Absolute Monarchy is one in which the acts of the ruler are unlimited by any principles of government. Such a monarchy is also called an Autocracy—as in the case of Russia, whose ruler is often termed "the Autocrat of All the Russias"—or a Despotism, when the government is characterized by cruelty or severity. The ruler of a despotism is called a *despot* or *tyrant*.

A Theocracy, a Patriarchal Government and a Government by a Chief are also absolute monarchies.

Examples.—The Jewish government was a Theocracy; that is, one in which God was the sovereign. Jehovah was the sole and absolute ruler of the nation. The best example of a Patriarchal

Government, in which the head of the family is its sovereign, is that of the Hebrew families before their settlement in Egypt; thus, Abraham and Jacob were each supreme in the governing of their descendants. The Government by a Chief is the most common form among savages. The Indian tribes of America and the Negro tribes (or kingdoms, as they are often called) of Central Africa are familiar examples.

Limited Monarchy.—A Limited or Constitutional Monarchy is one in which the acts of the ruler are limited by a constitution. The limitations upon rulers vary according to the constitutions of the states over which they rule.

Examples.—Spain, Italy and Holland are examples of Limited Monarchies, while Great Britain shows to what extent the constitution may deprive the monarch of power. In the British Empire the ruler, though theoretically possessing sovereign power, is so limited by the constitution as practically to possess none. The sovereignty is in fact in the English people, and the government is in reality a democracy in the form of a monarchy.

b. Division as to Succession.—Monarchies are also divided into Hereditary and Elective Monarchies. This division is based upon the transfer of the sovereignty from one individual to another.

Hereditary Monarchy.—An Hereditary Monarchy is one in which the sovereignty is inherited by an heir of the monarch upon his death. The rule of inheritance is fixed by custom or the constitution. The usual descent is from the father to the eldest son; and if there is no son, then to the eldest daughter. In many European states there formerly existed what is known as the Salic Law, which prohibited females from ever inheriting the sovereignty.

Elective Monarchy.—An Elective Monarchy is one in

which the sovereignty, upon the death of the ruler, is transferred to another individual, chosen by the people or by a class, in whom the sovereignty rests until the new ruler is chosen. Thus the former kingdom of Poland was an elective monarchy, the right to choose a king belonging to the nobility. Rome, prior to 509 B.C., is another example of this class. So, too, governments by chiefs are usually elective monarchies (though sometimes hereditary), the tribe, the warriors of the tribe, or the heads of families being entitled, upon the death of a chief, to select his successor.

SUMMARY.—A monarchy is then either absolute and hereditary, limited and hereditary, absolute and elective, or limited and elective.

2. **Aristocracies.**—An Aristocracy is a government by a class of persons, separated from the other members of the state by reason of family, wealth or power. The sovereignty rests equally in the persons of the ruling class. The government within the class is democratic, and for this reason an aristocracy is often classed as a republic.

EXAMPLES.—The so-called Republic of Venice is the best example of an Aristocracy. The sovereignty rested in a few families, and the government was conducted through a council selected by them, who, in turn, chose the Doge and the Council of Ten, who were the actual government. Genoa, and some of the Greek cities about the seventh century before Christ, also had aristocratic governments.

HIERARCHIES.—To this class belong certain church governments called Hierarchies; the churches are composed of the clergy and of lay members, but the sovereignty

and government is reserved to the clergy. The Church of Rome, the Greek Church and the Anglican Church have hierarchical governments.

3. **Democracies.**—A Democracy is a government in which all the members of the state possess an equal share of the sovereignty. There are two general divisions of this class of government: Pure Democracies, and Representative Democracies or Republics.

Pure Democracy.—A Pure Democracy is one in which the government is carried on *directly* by all the members of a community. It is only in states of small extent that this form can exist, as it would be impossible, in a large state, for its thousands of inhabitants to meet together and decide all questions of government. At the present day this form is found only among small savage tribes.

Examples.—Such a government is carried on as follows: The tribe meets in one assembly, the affairs of the community are discussed, the action to be taken is determined upon, and one or more are appointed to execute the will of the tribe, and after this has been done the authority of those appointed to act for the tribe ceases. A remnant of this form of democracy is still to be found in the town meeting, at which every member of the town is entitled to be present and express his opinion, and the questions of town government are decided by a vote of all the electors present.

Republic.—A Representative Democracy, or, as it is more commonly called, a Republic or Commonwealth, is one in which the government is *delegated* to a body of men elected from time to time by the *citizens*, as the members of the state are called, who have an equal voice in selecting those who are to act for all in the government.

Government in a Republic.—In a republic the three functions of government are usually administered by separate branches—the Legislative, by Representatives elected by the people ; the Judicial, by men, termed Judges or Justices, elected by the people or appointed by the Executive Branch of the government ; and the Executive, by a President elected by the people or chosen by their representatives. In most republics the Executive has a limited right, called the *right of veto*, to disapprove the acts of the Legislature; the Judiciary usually determines whether the acts of the Legislature and Executive comply with the principles declared by the constitution ; and the Legislature has power to remove the Executive and the Judiciary in case they violate the constitution. The three branches, therefore, though separate, are not absolute in the exercise of their functions, but are responsible to some other branch of the government.

Examples.—France is an example of a Republic. There is a single sovereignty, which rests in all the people. The three branches of government are distinct. The legislative is elected by the people, and divided into two houses, called a Senate and a Chamber of Deputies. The Republic is divided into Departments, (*each*) administered by a prefect, who is nominated by the central government, and the Departments are subdivided into Arrondissements, Cantons and Communes. The judges of the different courts are appointed by the President.

Chile is another example of a Republic with a single sovereignty. It also has a President, a Senate and a Chamber of Deputies elected by the people. For purposes of administration the Republic is divided into Provinces, and these into Departments, whose official heads are appointed by the central government, as are also the judiciary.

Ecuador and Colombia are other instances of Single Republics.

CONFEDERATED OR FEDERAL GOVERNMENTS.

Classification.—Confederated or Federal Governments, being based upon an agreement between sovereign and independent states, adopt the character of the governments of these states. Confederacies may be divided into two classes: Monarchical Confederacies and Republican Confederacies.

1. Monarchical Confederacies.—A Monarchical Confederacy is one composed of two or more monarchies, and necessarily assumes the form of a limited monarchy, as the sovereign power is confined to such powers as are surrendered to it by the individual states which form the confederacy.

Examples.—The German Empire is a Monarchical Confederacy, composed of four kingdoms, six grand duchies, five duchies, seven principalities and three free towns. By its constitution the sovereignty, for certain purposes, is given to two distinct branches, the executive and the legislative. The former is in the person of a President, with the title of the German Emperor, who is by the constitution the hereditary king of Prussia, the largest and most influential state of the Confederacy. The legislative authority is in the Bundesrath, or Federal Council, appointed by the governments of the individual states, and the Reichstag, or Diet, elected by the people. There is one federal court for hearing appeals, whose judges are appointed by the Emperor. All other courts are directly under the appointment and control of the different monarchies which form the Confederacy. Each state has also its own government, with an hereditary monarch at its head, and is supreme in all matters not surrendered to the Imperial Government by the constitution.

Austria-Hungary is also a Monarchical Confederacy, composed of the Empire of Austria and the Kingdom of Hungary, over which there is a common monarch with the titles of Kaiser of Austria and King of Hungary. To the Federal Government is

surrendered the charge of foreign, military and naval affairs, finance, etc., while in all other matters the governments of the two monarchies are separate, except that the executive authority is in the one ruler. In this it differs from the German Empire, in which each state has its own monarch. Austria and Hungary are both limited monarchies, with legislative assemblies of their own. The federal legislation is by sixty delegates from each monarchy, chosen by their respective assemblies from their own members. These Delegations, as they are called, meet separately, once a year, and propose federal laws, which are submitted to the Delegation from the other monarchy. If a law is not agreed to after three interchanges of the views of each Delegation, then the one hundred and twenty delegates meet in one body and decide it.

The famous Iroquois Confederacy, or the Confederacy of the Six Nations, is another example of a Monarchical Confederacy. It was composed of six Indian tribes whose villages extended across the central part of what is now New York State. Each tribe was under the government of hereditary sachems, but the Confederacy, in matters relating to the welfare of all the tribes, was governed by a grand council of fifty sachems, any of whom could demand a meeting of the council. In military affairs, however, two hereditary chiefs of the Seneca tribe commanded the warriors of the Confederacy.

2. Republican Confederacies.—A Republican Confederacy is governed in the same general way as a single republic, except that the sovereignty of the federal government is limited to those matters which affect the general welfare of all the states which form the confederacy, and which have been delegated to it by the states.

Examples.—The Swiss Confederation is a Confederacy of twenty-two separate republics, called Cantons. By its constitution the legislative and executive authority of the Confederation is in a Federal Assembly composed of two houses, the State Council and the National Council. The former has forty-four members, two from each Canton, and the latter consists of representatives elected by the people, one representative for every

20,000 inhabitants. The executive authority is delegated by the Federal Assembly to a Federal Council of seven members elected for three years. The President and Vice-President of this Council are selected each year by the Federal Assembly, and no member of the Council can be President two years in succession. It is the duty of the Federal Council to propose laws and to execute them when passed by the two houses. The Federal Council may, when it desires, and must, when petitioned by 30,000 citizens, submit a law to all the people, who may, by vote, adopt, amend or reject it. This principle of submission to the people is called the *referendum* and is a modified form of Pure Democracy. The act of petitioning by the people for a *referendum* is termed *initiation*. There is only one federal court, whose jurisdiction is limited. Each Canton has its own judges ; and, in all matters not delegated to the Federal Government by the constitution, it is supreme and has its own independent, republican government.

The United States has a government of this class, although in some particulars it possesses the character of a single republic. This likeness and difference will be shown when this government is studied more in detail.

The Federal Principle.—The principle which underlies this form of government is that each state of the union possesses the sovereignty in all matters which affect itself alone, while in all matters which relate to two or more of the states, or which have to do with foreign nations, the sovereign power is in the Federal Government.

SINGLE GOVERNMENTS.

1. **Monarchies**
   - *As to Power*
     - Absolute
       - Autocracy.
       - Despotism.
       - Theocracy.
       - Patriarchy.
       - By a Chief.
     - Limited, or Constitutional.
   - *As to Succession*
     - Hereditary.
     - Elective.
2. **Aristocracies.** *Hierarchies.*
3. **Democracies**
   - *Pure.*
   - *Representative*, or *Republican.*

CONFEDERATED GOVERNMENTS.

1. **Monarchical Confederacies.**
2. **Republican Confederacies.**

DIVISIONS OF GOVERNMENT IN A REPUBLIC.

1. **Legislative,** by Representatives *elected* by People.
2. **Executive,** by President *elected* by
   - People.
   - Representatives.
3. **Judicial,** by Judges
   - *elected* by People.
   - *appointed* by Executive.

PART SECOND.

RISE OF AMERICAN INSTITUTIONS.

CHAPTER I.

SOURCE OF AMERICAN INSTITUTIONS.

The Anglo-Saxons.—The principle of civil liberty, which is the important element in our system of government, was already strongly developed among the Angles and Saxons when they conquered England in the fifth century. They were believers in the rights and powers of the individual. They elected their own chiefs and had a voice in the government of their clans. Under their rule the people in their various councils made laws and treaties, levied some taxes, raised land and sea forces, and exercised many other legislative and also judicial powers. These powers, although modified by changing conditions, became firmly settled under the successive Saxon kings in the form in which they are historically known as the "Laws of Edward the Confessor."

Effect of Norman Conquest.—The Norman conquest wrought a change. The conquerors did not possess the Saxon ideas of liberty and equality. To them the king was the state and source of all law, and in the confusion of this change in ideas of government there followed con-

fiscation of property, oppressive laws, and the practical enslavement of the conquered people through the introduction of Feudalism.

These conditions continued during the reigns of "The Conqueror" and William II. But Henry I., fearing the effect of popular discontent, promised by a "Charter of Liberties," granted in 1101, to restore in part the "Laws of Edward the Confessor." This Charter is important as the first limitation upon the powers of the crown.

Magna Charta.—A century later (June 15, 1215) the great instrument of English liberty, known as Magna Charta, was wrung from King John by the people and nobles, who had revolted against his despotic rule. Of the sixty-three provisions of this great document, those which are important in the study of our government are the following:

TAXES.—No scutage* or aid† shall be imposed in our kingdom unless by the general council of our kingdom; except for ransoming our person, making our eldest son a knight and once for marrying our eldest daughter; . . .

GENERAL COUNCIL.—And for holding the general council of the kingdom concerning the assessment of aids . . . we shall cause to be summoned the archbishops, bishops, abbots, earls and greater barons of the realm, singly by our letters. And furthermore, we shall cause to be summoned generally . . . all others who hold of us in chief, for a certain day . . . and to a certain place; and in all letters of such summons we will declare the cause of such summons.

By these provisions the taxing power was placed in

*SCUTAGE: Tax imposed instead of military service.
†AID: Feudal tax paid by the vassal to his lord.

the people, and definite means were prescribed for its exercise.

PERSONAL RIGHTS.—No freeman shall be taken or imprisoned or disseised* or outlawed, or banished, or anyways destroyed, nor will we pass upon him, nor will we send upon him, unless by the lawful judgment of his peers† or by the law of the land.

We will sell to no man, we will not deny to any man, either justice or right.

A freeman shall not be amerced‡ for a small offense, but only according to the degree of the offense ; and for a great crime according to the heinousness of it.

These provisions were to protect the subject in his personal freedom by guaranteeing that punishments should be proportionate to the enormity of the crime.

PROPERTY RIGHTS.—Neither shall we nor our bailiffs take any man's timber for our castles or other uses, unless by the consent of the owner of the timber.

This provision was intended to protect the subject in his property, and is so manifestly just that it has continued in force to the present day.

House of Commons.—The next development in popular government was the establishment of the House of Commons, which, like Magna Charta, was the result of a conflict between the king and the barons, in which the latter were successful. Henry III. and his son having been taken prisoners, the government passed temporarily into the hands of Simon de Montfort, the leader of the rebels, who, to strengthen himself, summoned a parlia-

*DISSEISED: Unlawfully deprived of property.

†PEERS: Equals, of the same rank.

‡AMERCED: Punished at the discretion of a court.

ment (1265), in which he gave seats not only to those entitled to them under Magna Charta, but also to two representatives from each town or borough. This was the first House of Commons, the representative body of the common people. The example thus set was not immediately followed. But in 1295 Edward I., in order to obtain supplies for wars in France and Scotland, summoned a parliament, to which he called "two burghers from every city, borough and liege-town to sit with the nobles and barons," stating in the summons that "what concerns all should be approved by all." This was the permanent establishment of the House of Commons.

Rights of Colonists in America.—These were the governmental rights to which Englishmen were entitled at the time of the colonization of America, and to these rights, as also to those subsequently granted, the settlers in America became entitled as fully as the inhabitants of London or other English towns. For in the charter under which the Plymouth and London Companies were organized the king stated that the colonists and their descendants should

> have and enjoy all liberties, franchises and immunities of free denizens and natural subjects, within any of our other dominions, to all intents and purposes as if they had been abiding and born within this our realm of England, or in any other of our dominions.

Habeas Corpus Act.—Of the rights subsequently granted, but two will be noticed. First, the Habeas Corpus Act. From the time of Magna Charta it had been a principle of law that a prisoner could demand from a court an order, or *writ*, compelling his jailer to produce him before

the court for the purpose of determining whether he was legally imprisoned. This did not apply in cases of arrest by the Royal Council, and as a result many persons had been illegally and arbitrarily imprisoned. To check this abuse, Parliament, in 1679, passed the Habeas Corpus Act, by which it was provided that no judge should refuse the writ to any prisoner, or to order his release from confinement if such confinement was illegal.

Bill of Rights.—The other important measure is the Bill of Rights. When James II. was deposed, and William and Mary were called to the throne, there was annexed to the Act, which determined the future succession, a statement of rights which definitely fixed the limits of royal power and stated the principles of English constitutional government. After a recital of complaints the Bill continues:

That the pretended power of suspending of laws, or the execution of laws by regal authority, without consent of parliament, is illegal.

That it is the right of the subject to petition the king; and all commitments and prosecutions for such petitioning are illegal.

That the raising or keeping a standing army within the kingdom in time of peace, unless it be with the consent of parliament, is against law.

That the freedom of speech and debates or proceedings in parliament ought not to be impeached or questioned in any court or place out of parliament.

That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

DATES OF PRINCIPAL EVENTS IN RISE OF AMERICAN INSTITUTIONS.

449–455 Conquest of Britain by the Saxons and Angles.
1050–65 Laws of Edward the Confessor.
1066 Norman Invasion of England.
1101 Charter of Liberties.
1215 Magna Charta.
1265 First House of Commons.
1295 House of Commons made Permanent.
1297 Confirmation of the Charter by Edward I.
1606 Charter of the Plymouth and London Companies.
1679 The Habeas Corpus Act.
1689 Bill of Rights.

CHAPTER II.

GROWTH OF AMERICAN INDEPENDENCE.

Cause of American Revolution.—The American Revolution is traceable to one cause—the violation of the rights and liberties of Englishmen, inherited by and guaranteed to the colonists. Until the cession of Canada to England the colonists had been allowed to exercise all the rights of Englishmen, for the menace of the French on the north and west was sufficient to warn the British ministry that any trouble or irritation would weaken its power in the New World. But with the fall of Quebec three measures were proposed which were intended to give the British Government more complete control over the colonists. These were the enforcement of the Acts of Trade, the taxation of the colonies and the quartering of troops in America.

Acts of Trade; Writs of Assistance.—The Acts of Trade were statutes which, first enacted during the reign of Richard II., had been so extended that at this time they practically prohibited the colonists from exporting their produce in any other than English ships, from importing goods from any other than English ports, or from manufacturing goods which could be made in England. While the original purpose of these measures was to destroy the Dutch trade with the colonists, it had developed into a

scheme to make of the colonies sources of supply for the markets of England and consumers of her products; and the colonists, appreciating this, continued their foreign trade by smuggling.

To detect and punish smugglers, recourse was had to Writs of Assistance, which were warrants issued by a court empowering officers to enter and search any premises for the purpose of finding smuggled goods. This action of the Government produced violent opposition throughout the colonies. James Otis declared that it was an invasion of private liberty such as had "cost one king of England his head and another his throne." He argued that the colonists were not bound to obey laws in the making of which they had no voice, and that the forcing of the colonists to pay exorbitant duties upon goods not imported from England was "taxation by a foreign legislature without our consent."

Quartering of Troops; Stamp Act.—The excitement over the Writs of Assistance had not ceased before the ministry determined to station permanently in the colonies a force of ten thousand soldiers to aid the colonial governors in the enforcement of the laws. For the purpose of partially defraying the expense of these garrisons it was further proposed to levy a tax in the form of a stamp duty, and in 1765 the Stamp Act was passed. Its enactment was the signal for violent popular demonstrations in the colonies, and as a result a congress of delegates from Massachusetts, South Carolina, Pennsylvania, Rhode Island, Connecticut, Delaware, Maryland, New Jersey and New York met at the city of New York, October 7, 1765. This meeting, known as the "Stamp Act Con-

gress,"* lasted two weeks. It drew up a Petition to the English people, and a Declaration of Rights and Grievances, in which were set forth the rights of the colonists to the liberties of Englishmen, among which was the right to tax themselves; it complained of the Stamp Act and asked for a repeal of the Acts of Trade. But there was no suggestion of revolution. The determination of the colonists to protect their rights, and the support of a strong party in Parliament, compelled the repeal of the Stamp Act in 1766, but the obnoxious principle underlying it was preserved; for with the Act of Repeal was passed the "Declaratory Act," whereby it was asserted that the colonies were

> subordinate unto and dependent upon the Imperial Crown and Parliament of Great Britain, and that Parliament hath, and of right ought to have, full power to make laws and statutes of sufficient force and validity to bind the colonies and people of America, subjects to the crown of Great Britain, in all cases whatsoever.

Townshend Acts of 1767.— It was not long before the threat implied in this declaration was carried out. In 1767 Townshend, Chancellor of the Exchequer, who was opposed to a conciliatory policy, obtained the passage of Acts which placed duties on wine, oil, fruit, glass, paper

* There had been prior meetings for common purposes. In 1643 Massachusetts Bay, Connecticut, Plymouth and New Haven had joined under the name of the "United Colonies of New England" in "a firm and perpetual league of friendship and amity for offense and defense . . ." Again, during the French and Indian War, representatives from the New England Colonies, and from New York, Pennsylvania and Maryland met at New York to devise plans of union and defense.

lead and teas, and at the same time revived the Writs of Assistance. These enactments met with the same reception as the Stamp Act. The colonists recognized in them the hateful principle of taxation without representation. The Virginia Assembly declared the tax illegal and protested against its enforcement, and later adopted a pledge not to buy any of the goods upon which such taxes were levied. Similar action was taken in several other colonies.

Coercive Action of British Government.—The king, enraged by the temper of these petitions and resolutions, declared the originators to be rebellious and guilty of treason, and measures were adopted to repress the expression of such sentiments. The colonial governors were directed to prevent public assemblies, and troops were sent to Boston and New York. The danger of this policy was, however, felt in England, and at length, in April, 1770, Parliament repealed the provisions of the Townshend Acts, except such as related to the duty on tea, which was made so low as to render smuggling unprofitable.

Committees of Correspondence.—Meanwhile the agitation continued, and open conflict seemed unavoidable. Samuel Adams, who saw the probability of war, introduced into the Boston town meeting in November, 1772, a resolution that "a committee of correspondence be appointed to state the rights of the colonists . . . and also request of each town a free communication of their sentiment on this subject." The idea was received everywhere with favor. Similar committees were selected in other colonies, who spread the doctrine of liberty among

the people and formed an incipient union by constant intercourse upon all matters of public interest.

The Tea Agitation.—Still the ministry was blind to the dangers, and upon the demands of the East India Company determined to enforce the tea tax. For this purpose, in the fall of 1773, cargoes of tea were shipped to New York, Boston, Philadelphia and Charleston. At Philadelphia and Charleston the cargoes were either returned or stored in damp cellars. At Boston, on the night of December 16, 1773, the ship was boarded, the cargo broken open and the tea emptied into the harbor. This was called the "Boston Tea Party." At New York a similar demonstration was made by the "Sons of Liberty."

Retaliation by Great Britain.—Retaliatory measures were at once taken by Parliament. The principal ones were aimed at Massachusetts, which, possessing a charter government, was deemed by the ministry as being most hostile to British interests. These closed the port of Boston, annulled the charter of the colony and placed the government in the hands of a governor and a council selected by him, and provided for the further quartering of troops in Boston. Another Act provided for the trial in England of all soldiers, magistrates or revenue officers charged with murder.

First Continental Congress.—In view of the dangers threatened by such enactments the lower house of the Massachusetts legislature called upon the other colonies to join in a congress to meet at Philadelphia, and in response to the call delegates from the different colonies met, September 5, 1774, in what is known as the "First

Continental Congress." Among the delegates were Samuel and John Adams, John Jay, Patrick Henry and George Washington. They adopted a Declaration of Rights, and prepared a Petition to the king, praying for a redress of wrongs. They also presented an address to the same effect to the people of Great Britain, united in a pledge to import no goods from England or her colonies, provided for a second Continental Congress and adjourned October 26, 1774.

Second Continental Congress.—These measures, however, failed of their purpose, and the colonists determined upon armed resistance. April 19, 1775, the first engagement was had at Lexington, and the news of it was the signal for a general uprising. May 10, 1775, the British garrison at Ticonderoga surrendered to Ethan Allen, and the same day the Second Continental Congress assembled at Philadelphia. On June 7, 1776, Richard Henry Lee of Virginia introduced into the Congress the following resolution: "Resolved—That these United Colonies are, and of right ought to be, free and independent States; that they are absolved from all allegiance to the British Crown; and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved." On June 11, 1776, Thomas Jefferson, John Adams, Benjamin Franklin, Roger Sherman and Robert R. Livingston were appointed a committee to prepare a suitable declaration of grievances and a statement of the attitude of the colonies. This committee made its report July 1st. The next day the Lee resolution was passed, and on the Fourth of July the Declaration of Independence was adopted.

Declaration of Independence.—Thus the separation of the colonies from England was made complete. An examination of the Declaration of Independence discloses no new governmental principles. (See Appendix I.) It is a simple statement of the inherent rights of the people, which they had never surrendered, together with a plain narration of the wrongs which had compelled their act. It is a concise exposition of the true principles of government, and has been through the existence of the Union a great and powerful factor in the maintenance of a pure national life.

DATES OF PRINCIPAL EVENTS IN THE GROWTH OF AMERICAN INDEPENDENCE.

1645-63 Navigation Acts.
1760 George III. crowned.
1761-64 Writs of Assistance.
1763 Peace of Paris.
1765 Stamp Act.
1765 Act for the Quartering of Troops.
1765 Colonial Congress.
1766 Repeal of Stamp Act.
1766 Declaratory Act.
1767 Townshend Revenue Acts.
1770 (March 5) Boston Massacre.
1770 Repeal of Townshend Duties, except on Tea.
1773 (December 16) Boston Tea Party.
1774 (September 5) First Continental Congress.
1775 (April 19) Battle of Lexington.
1775 (May 10) Second Continental Congress.
1776 (July 4) Declaration of Independence.

CHAPTER III.

THE REVOLUTIONARY GOVERNMENT.

MAY 10, 1775, TO MARCH 1, 1781.

The Revolutionary Government of Congress.—A revolutionary government is one formed to carry out the will of those who claim the sovereignty of a nation in opposition to those who possess it. Such a government usually assumes an authority not delegated to it, but acts in the interests of those whom it represents, as necessity requires. This was the character of the government established by the Second Continental Congress. Its sole object was resistance to the tyrannical measures of the British Crown. To accomplish this, it created committees upon military and Indian affairs and foreign relations, established a general treasury, appointed Washington commander-in-chief of the Continental Army, recommended to the colonial governments a uniform system of militia and provided for a continental postal service. To furnish revenue, paper money, known as "Continental Currency," was issued; for the large sums necessary to carry on the war could not be borrowed at home and a foreign loan had not as yet been proposed.

Articles of Confederation.—But the Congress saw that its government was revolutionary and inadequate to meet the obligations which belong to sovereign states. There-

fore, on the same day that the committee was appointed to draft the Declaration of Independence, another was selected, with Samuel Adams as its chairman, "to prepare and digest the form of a confederation to be entered into between these colonies." This committee made its report on July 12, 1776, but it was not until November, 1777, that a form of government was agreed upon. Further delay was occasioned by the examination of the proposed plan by the state governments, and it was not until July 9, 1778, that the Articles of Confederation were formally adopted. Then they were signed by the delegates of eight States—New Hampshire, Rhode Island, Massachusetts, Connecticut, Pennsylvania, New York, Virginia and South Carolina. The North Carolina delegates signed on the 21st, and three days later, those from Georgia. New Jersey ratified November 26, 1778; Delaware, May 5, 1779; and Maryland, March 1, 1781.

Land Claims Delay Ratification.—The cause of the delay on the part of New Jersey, Delaware and Maryland grew out of a state of affairs which became of the greatest moment to the future history of government in the United States. Along the western frontier of the States lay great tracts of unoccupied lands. On the separation of the colonies from England, the States whose charters had extended their territory indefinitely west claimed, as the successor of the British Crown, the sovereignty of these vacant lands as far as the Mississippi River. Against these claims Maryland in particular vigorously protested, refusing to enter the Confederacy unless the sovereignty over these lands was made general, and de-

claring that if independence was secured it would be by the efforts of all the States, and, therefore, this territory should become the common property of the Confederacy.

New York's Action.—Affairs were in this condition when New York, in September, 1780, ceded to the Confederacy all its claims to the lands lying westward of its present boundary. Induced by the sacrifice of New York, and fearing that England would be encouraged by the apparent dissensions among the States, the Maryland Legislature ratified the Articles in January, 1781, and in the same month Virginia ceded to the Confederacy all her claims to any part of the lands which are known as "The North-West Territory." The formal act of subscribing to the Articles by the Maryland delegates in Congress occurred March 1, 1781, and the following day the Congress assembled under the Confederation.

DATES OF PRINCIPAL EVENTS RELATING TO ARTICLES OF CONFEDERATION.

1776	June	11,	Committee appointed on Plan of Government.
	July	12,	First Report of Committee.
	Aug.	20,	Second Report of Committee.
1777	Nov.	17,	Circular Letter sent to States.
1778	July	9,	Articles of Confederation signed by New Hampshire, Rhode Island, Massachusetts, Connecticut, Pennsylvania, New York, Virginia and South Carolina.
	July	21,	Articles signed by North Carolina.
	July	24,	" " " Georgia.
	Nov.	26,	" " " New Jersey.
1779	May	5,	" " " Delaware.
1781	March	1,	" " " Maryland.
	March	2,	Congress meets under Articles.

CHAPTER IV.

OUTLINE OF THE ARTICLES OF CONFEDERATION.

1. **Form and Purposes of the Union.**—The form of the union was a confederacy, in which each State retained its sovereignty and every power not expressly delegated to the United States. The purposes of the Union were the common defense, the security of liberty and mutual and general welfare.

2. **The System of Government Established.**—All the functions of government were to be exercised by a Congress of delegates, each State being represented by not more than seven or less than two (delegates) appointed annually; but in the proceedings of the Congress each State could cast only one vote, regardless of the number of its delegates. There was no provision for executive and judicial branches apart from the legislative.

During a recess of Congress, which could not exceed six months, "The Committee of the States," consisting of one delegate from each State, was empowered to exercise certain of the powers of Congress, but no power which required the assent of nine States could be so exercised.

3. **The Powers of the Government.**—The most important legislative powers were to declare war, appropriate money, borrow money and issue bills of credit, agree on

the number of land forces and make requisition upon each State for its proportion, determine the number of naval forces, and build and equip a navy. These powers could only be exercised by the assent of *nine* States. Besides the foregoing, the Congress, by a *majority* of the States, could make peace, establish rules concerning captures on land and sea, regulate coinage, fix a standard of weights and measures, make rules for the government of the army and navy, ascertain the money necessary for public expenses and apportion among the States the amounts which they must pay into the common treasury.

The most important executive powers of Congress were to appoint a commander-in-chief of the army and to enter into treaties with foreign nations, provided no treaty of commerce should interfere with the right of each State to fix duties and imposts ; and to exercise these powers the assent of *nine* States was required. Congress could also, by a *majority* of the States, send and receive ambassadors, establish post-offices and exact postage, appoint civil officers and officers of the army and navy except regimental officers, direct the operations of the army and navy, and organize and conduct the common treasury of the Confederacy.

The powers of the Congress relating to judicial matters were limited to the establishment of courts for the trial of piracy and felonies committed upon the high seas and to the determination of questions of boundary and jurisdiction between two or more States.

4. Restrictions upon the Government.—Besides the limitation of the government to those powers conferred upon it by the Articles, Congress was prohibited from granting

any titles of nobility, and its officers were forbidden to receive a reward, office or title from a foreign ruler or state.

5. The Restrictions upon and Requirements of the States.—Without the consent of the United States no State could send or receive ambassadors or enter into any agreement or treaty with a foreign state, lay any imposts or duties which would interfere with any treaty previously made by the United States, have land or naval forces in time of peace, engage in war unless actually invaded or to prevent an Indian outbreak, and grant letters of marque and reprisal except after a declaration of war by the United States or when a State was infested by pirates.

Each State was required to grant to the people of every other State the same privileges as those possessed by its own, to surrender fugitives from justice upon proper requisition, to give full faith and credit to the records, acts and judicial proceedings of the other States, to levy and collect the taxes apportioned to it by the Congress for the purposes of the union and pay the same into the common treasury.

6. Other Provisions.—The Articles also provided for the admission of Canada into the Union, pledged the public faith to the payment of money borrowed and debts contracted by the revolutionary government, declared that the union so formed should be perpetual and that the Articles could only be amended by an agreement of the Congress and the confirmation of the amendment by the legislature of every State.

ANALYSIS OF ARTICLES OF CONFEDERATION.

Powers of Congress *requiring the assent of 9 States, and which could not be exercised by the Committee of States.*

Legislative	Declare war. Appropriate / Borrow } Money. Organize army and navy.
Executive	Make treaties. Appoint commander-in-chief.
Judicial	Organize admiralty courts. Determine boundaries between States.

Powers of Congress *requiring the assent of 7 States, which could be exercised by Committee of States when Congress was not in session.*

Legislative	Make peace. Make rules as to captures. Regulate coinage, weights and measures. Pass military laws. Estimate expenses. Determine method of land valuation.
Executive	Send and receive ambassadors. Control the postal service. Appoint officers of the army and navy. Direct military operations. Conduct the common treasury.

Limitations on States.

Restrictions	Send or receive embassies. Make treaties. Lay imposts or duties contrary to treaty. Have an army in times of peace. Engage in war. Grant letters of marque in times of peace.
Requirements	Grant equal rights to citizens of other States. Surrender fugitives of justice from other States Recognize records of other States. Keep a disciplined militia. Levy and collect proportion of taxes.

CHAPTER V.

THE GOVERNMENT UNDER THE ARTICLES OF CONFEDERATION.

MARCH 2, 1781, TO MARCH 4, 1789.

Condition at Close of War.—The independence of America having been recognized in 1783, the inefficiency of the government became evident to the statesmen of the Confederacy. The greatest weakness lay in the fact that the functions of government were not performed by separate branches, but were all vested in the Congress, which, while it possessed sufficient legislative powers, had not the executive power to put them into effect. It could declare war, but possessed no means to carry it on; it could make peace, but could not compel the States to comply with the terms; it could appropriate money, but had no power to levy and collect taxes; and, finally, there was no provision for the control of the "North-West Territory" or for the regulation of commerce.

Attempts to Correct Articles.—Immediately upon the termination of the war, attempts were made to rectify the faults of the Articles; but these were futile, as each State turned to the advancement of its local interests and opposed any agreement to surrender, for the benefit of all, any rights which it possessed. The Confederacy was gradually disintegrating—the States drawing apart from

each other. There were rumors of a division into two or more confederacies, and even a monarchy was suggested.

The Public Lands.—One thing, however, tended to hold the Union together—the ownership of the public lands. Any State withdrawing from the Confederacy would lose its interest in the Western Territory, whose great resources were then beginning to be realized. Besides this, Congress in its struggle to maintain the credit of the nation had sold portions of this land to meet the public debt.

Commerce.—The recognized necessity of uniform commercial relations was, however, the immediate cause of the strengthening of the union. The lack of power in Congress to regulate trade had left the States to act separately in this important matter. The result was a great variance in the laws, and commerce became so demoralized that the Virginia Legislature called upon the other States to send delegates to a convention at Annapolis in September, 1786, to see if some plan could not be devised for the establishment of a uniform system of trade regulations among all the States.

Annapolis Convention.—At the convention which met in response to this appeal, delegates from only five States were in attendance, and the object for which it was called was not attained. But the discussions which were held disclosed the fact that the weakness of the government was generally recognized, and led to a resolution suggesting a convention of delegates from all the States "to devise such further provisions as might appear necessary to render the constitution of the Federal Government adequate to the exigencies of the Union."

Constitutional Convention.—After considerable delay

Congress adopted the suggestion and issued a call to the States to send delegates to a convention to meet at Philadelphia, May 14, 1787. It was not, however, until the end of May that the convention was formally opened, but from that time the delegates from the twelve States represented (Rhode Island having failed to send a delegation) were in continuous session until September 17, 1787, when they completed the scheme of government which is known as the Constitution of the United States.

CHAPTER VI.

THE STATE GOVERNMENTS.

Colonial Governments; Provincial.—Colonial governments are usually divided into three classes: Provincial (Royal or Crown), Proprietary and Charter. New Hampshire, New York, New Jersey, Virginia, the Carolinas and Georgia had Provincial Governments. They possessed no charters or grants, but were under the control of royal governors, whose only limitations were their commissions and the will of the crown, who appointed and removed them at pleasure. There was also a council appointed by the crown or governor, which aided the governor in his duties and formed the upper house of the colonial legislature. The governor was also authorized to summon an assembly, chosen by the people of the colony, which formed the lower house of the legislature. These two legislative houses had the right to make laws concerning local matters, but their acts could be vetoed by the governor and annulled by the crown. The governor, as the royal representative, possessed exceptional powers. He could remove members of the council and prorogue, or dissolve, the assembly and order another election.

Proprietary.—Maryland, Pennsylvania and Delaware had Proprietary Governments; that is, the rights of local government were granted by the crown to a certain indi-

vidual termed the "proprietary" or "lord proprietary." The form of government was similar to that of the royal colonies. The proprietary either appointed a governor or acted in that capacity himself, selected a council and authorized the assembling of representatives for local legislation. In Maryland the acts of the proprietary government were not subject to royal approval; but over those of Pennsylvania and Delaware the crown possessed a veto power.

Charter.—The Charter Governments comprised Massachusetts, Connecticut and Rhode Island. The charters, which were granted by the crown, were, in fact, written constitutions, which the sovereign was bound to respect, and established a form of government similar in many respects to the two classes already described. In Massachusetts the governor was appointed by the crown, but the people were represented by an assembly chosen by them, and their representatives had the privilege of selecting the governor's council. The people of Connecticut and Rhode Island possessed the same rights as those of Massachusetts, with the further privilege of electing their own governors. In fact, they were true republics, with whose local government the English sovereign could not legally interfere.

Change to State Governments.—With the opening of the War for Independence all the colonies except Rhode Island and Connecticut organized provisional governments similar to those with which they were familiar, substituting elections by the people in place of appointments by the crown or the lord proprietary.

Character of the New Governments.—As a consequence

of the hatred which had been engendered against the royal governors during the period immediately preceding the war, the powers of the chief executive in the new governments were much more limited than under the colonial governments. There was such strong opposition to the idea of a single executive that at first in Pennsylvania, Delaware, New Hampshire and Massachusetts a council was substituted in place of a governor, and it was not until 1792 that Delaware recognized that a governor elected by the people was not a menace to liberty. The assembly of representatives, chosen by the people, which was found in every colony, was retained without change, as it was clearly republican in character. The governor's council became the senate, elected by the people or by their representatives, but to which no one could be chosen unless he possessed certain qualifications. At first, in Pennsylvania and Georgia the entire legislative power was vested in the assembly, but later these States adopted the dual form of legislature.

The English System the Model.—These State governments were in their general form modeled after the English system, as it was understood by the colonists. The governor resembled the English ruler. The upper house of the legislature, like the House of Lords, was supposed to represent the land owners and wealthy colonists, as the "Lords" represented the English nobility. The lower house, like the House of Commons, was composed of representatives of all classes, without distinction as to rank or social position. There was this difference, however, between the two systems. In England the King and the "Lords" were hereditary, and the "Commons"

only were chosen by the people, while in the States all officers were selected by popular vote ; in England the sovereignty was in the monarch, while in America it was in the people.

ANALYSIS OF COLONIAL GOVERNMENTS.

Provincial (New Hampshire, New York, New Jersey, Virginia, the Carolinas and Georgia).

Legislative
- Council appointed by Crown or Governor.
- Assembly chosen by Colonists.
- Veto by Governor.
- Veto by Crown.

Executive : Governor appointed by the Crown.

Judicial : Judges appointed by the Crown.

Proprietary (Maryland, Pennsylvania and Delaware).

Legislative
- Council appointed by Lord Proprietary.
- Assembly chosen by Colonists.
- Veto by Governor and in some cases by Crown

Executive
- Lord Proprietary or Governor appointed by Lord Proprietary.

Judicial : Judges appointed by Lord Proprietary.

Charter (Massachusetts, Connecticut and Rhode Island).

Legislative
- Council selected by Representatives.
- Assembly chosen by Colonists.
- Veto by Governor.

Executive : Governor
- Appointed by Crown or Selected by Colonists.

Judicial : Judges
- Appointed by Crown or Selected by Colonists.

CHAPTER VII.

THE CONSTITUTIONAL CONVENTION.

Prominent Delegates.—Of the fifty-five delegates who took part in the Constitutional Convention, three are particularly worthy of mention. These are George Washington, James Madison and Alexander Hamilton.

Washington.—On the organization of the Convention, Washington was unanimously chosen president. His difficulties as commander-in-chief and the progress of events since 1783 had convinced him that some decisive action was necessary to preserve the Union. His views as to the necessary steps were general; he left the detail to others. But he possessed a profound comprehension in applying governmental principles to present needs, while his experience during the war had broadened his views, so that they were national rather than local. In fact, he seemed to belong to all the States, and not to Virginia alone, and throughout the deliberations at Philadelphia he sought the general good rather than the advancement of the interests of his own State.

Madison.—The most active delegate was James Madison, then thirty-six years of age. He had served his State in Congress and had been prominent in the legislature. It was Madison who conceived the idea that distinct national and state sovereignties might exist in one system of gov-

ernment and be applied to the same individuals ; and it was his draft of a scheme of government, known as the "Virginia Plan," which became the basis for our present Constitution. During the sessions Madison not only spoke on every important question, but kept full notes, which are our chief source of knowledge of the proceedings of the Convention.

Hamilton.—Equally prominent with Madison was Alexander Hamilton, then thirty years old. He had been a member of Congress and a delegate to the Annapolis Convention. His influence upon the Convention was marked, for it was through his efforts that the national government obtained a large part of the power with which it was clothed by the Constitution. His strength lay in his great knowledge of the principles of government, his power to apply them, and his ability to present his opinions in a clear and convincing manner.

Franklin.—Of almost equal influence was Benjamin Franklin, then in his eighty-second year. His knowledge of public affairs extended over half a century, and he had represented the colonies and States in foreign countries for twenty-five years. This experience gave to his utterances a weight which their brevity and common-sense enhanced. He was the peacemaker of the Convention. When debates became bitter or too personal, it was Franklin who by his wit and tact restored the delegates to good humor. When the Constitution was drafted in its final form, it was Franklin who moved its adoption, using in part the following words, which breathe the loftiest patriotism:

The opinion I have had of its errors, I sacrifice to the public

good. Within these walls they were born, and here they shall die. If every one of us, in returning to our constituents, were to report the objections he had to it . . . we might prevent its being generally received, and thereby lose all the salutary effects and great advantages resulting naturally in our favor among foreign nations as well as among ourselves from our real or apparent unanimity. . . . I hope, therefore, that for our own sakes as a part of the people, and for the sake of posterity, we shall act heartily and unanimously in recommending this Constitution . . . wherever our influence may extend, and turn our future thoughts and endeavors to the means of having it well administered.

Other Statesmen Present.—Among the other prominent delegates was James Wilson of Pennsylvania, a signer of the Declaration of Independence and the great apostle of representative government. He was one of the leading American lawyers of his day, and his speeches in favor of the Constitution present the advantages of popular representation in the strongest light. There were also present Gouverneur Morris, to whose pen we are indebted for the clear and concise style of the Constitution, Charles Cotesworth Pinckney of South Carolina, Rufus King and Elbridge Gerry of Massachusetts, and Roger Sherman of Connecticut.

Statesmen Absent.—Conspicuously absent from the Convention were Thomas Jefferson, at that time representing the Confederacy in Europe, and John Jay, then Secretary of Foreign Affairs. John Hancock and John Adams were not delegates, and Samuel Adams and Patrick Henry were opposed to any change in the existing government.

Systems of Government Discussed.—Three forms of republican government were discussed in the Convention: namely, the *National*, which placed the power in the

hands of a central government and substantially did away with State lines except for the purposes of governing; the *Confederate* or *Federal*, which was similar to that instituted by the Articles of Confederation; and a third form, a compromise between the others, which placed the power in all national matters in a central government, and left the local matters of each State to the exercise of its own sovereignty. Under the latter plan both the general and State governments dealt, in their separate capacities, with the individual.

Plans Proposed.—At the very outset, two plans were presented to the Convention. One of these, based upon the national idea, was prepared by Madison, and was known as the "Virginia Plan." The other, based upon the confederate or federal* principle, was the work of Charles Cotesworth Pinckney. On June 13 the committee to which these plans had been referred reported favorably on the "Virginia Plan." Then the New Jersey delegates submitted what is known as the "New Jersey Plan," which proposed a government similar in many respects to that of the Confederacy. The larger States favored the "Virginia Plan," which based a State's representation in the central government upon the number of its inhabitants, and gave the national leg-

* *Use of the Word "Federal."*—With the adoption of the Constitution the word "federal" became generally applied to the system of government thereby established, while the system based upon a league between independent States was termed a "confederacy." Thus the word "federal" was applied to the party which aimed at the adoption of the Constitution; and during the late civil war the same term was used to designate the Union forces, while the word "confederate" was applied to the armies of the seceding States.

islature the power of veto over state legislation ; while the smaller States supported the "New Jersey Plan," which gave to each State an equal voice in the general government. Both plans differed radically from the Articles of Confederation, in that the three branches of government—the executive, legislative and judicial—which in the Confederacy had all been joined in the Congress, were separate and distinct.

Virginia Plan Adopted.—The general outline of the "Virginia Plan" was adopted, and the Convention proceeded to take up the different subjects in detail and to harmonize the antagonisms among the various factions. It was during these discussions that the patience and patriotism of the delegates were often taxed to the utmost, and it was only through concessions by all that their labors were in the end successful.

Constitution Submitted to the States.—The completed Constitution, a mass of compromises, was then submitted to the States for adoption. Conventions were called and a period of the most intense excitement followed. The work was attacked on all sides. The conservative element in the different States strenuously opposed the new form of government. They saw the power of the States diminished, and in their stead a central government established, which they believed to be so strong as to endanger state and personal liberty. Objections were made to the Executive, to Senators and Representatives voting as individuals, to an oath of allegiance to the general government, and particularly to the absence of a Bill of Rights. The delegates were also made the object of attacks and their motives were questioned.

"The Federalist."—It was in meeting and answering these objections that Hamilton, assisted by Madison and Jay, was most active, and exerted a powerful influence in obtaining the ratification of the Constitution. Their replies and arguments, published in a series of papers known as "The Federalist," and which is still considered among the most learned and valuable treatises upon the Constitution, silenced all attacks and convinced the people of the benefits of the proposed change. And after prolonged discussions, and even riots and violence, the conventions met, the work was ratified * and the established Constitution went into effect March 4, 1789.

A list of the delegates is placed in Appendix II.

* The States ratified the Constitution in the following order: Delaware, December 7, 1787; Pennsylvania, December 12, 1787; New Jersey, December 18, 1787; Georgia, January 2, 1788; Connecticut, January 9, 1788; Massachusetts, February 6, 1788; Maryland, April 28, 1788; South Carolina, May 23, 1788; New Hampshire, June 21, 1788; Virginia, June 26, 1788; New York, July 26, 1788; North Carolina, November 21, 1789, and Rhode Island, May 29, 1790.

PART THIRD.

THE FEDERAL GOVERNMENT.

CHAPTER I.

THE PREAMBLE.

Many conflicting opinions exist concerning the sources of American institutions. One extreme view is that of Sir Henry Maine, who says that the "Constitution of the United States is a modified version of the English Constitution . . . which was in existence between 1760 and 1787." In other words, American institutions are a mere copy of those of the England of that period. The other extreme is expressed by Mr. Gladstone—that "it is the greatest work ever struck off at any one time by the mind and purpose of man." That is, that the scheme of government as set forth in the Constitution is wholly original and the invention of the members of the Constitutional Convention. Each of these views is partially wrong. The Constitution is not a copy, nor is it entirely original. The safer statement is that it is the product of the experience and observation of the people in their connection with England, their colonial and state governments, and the Confederacy of 1781. This experience and observation had impressed upon the people the importance of a stable union. Its advantages had been

seen during the colonial period under the distressing circumstance of French invasion and Indian outbreak. Its necessity had been emphasized during the struggles of the War of Independence. Its weakness had been realized under the loose league of the Confederacy.

During the war the purpose to win independence held the States together ; but when this was attained and the danger of foreign aggression had been removed, sectional prejudices and local interest proved stronger than the common tie, and the " league " began to fall apart. The faults of the Confederacy were apparent. Washington called them to the attention of the States ; and Hamilton and others, foreseeing the danger of disintegration, earnestly urged the establishment of a stronger government. It was to correct these faults and save the Union that the Constitutional Convention had been called. The problem before the delegates was definite. Their task was to devise such provisions as should " appear to them necessary to render the . . . Federal Government adequate to the exigencies of the Union."

With the single exception of the experiment of the Confederacy, American experience had been limited to governments which dealt directly with the individual. This was the basis of government in England, the Colonies and the States, but it was not so in the Confederacy. The latter dealt only with States, and the chief cause of its failure had been its inability to control the individual. Fully comprehending this defect, the Convention changed the basis of government and made authority over the individual the fundamental principle.

Such a change in the object of governmental influence

necessitated a corresponding change in the source of governmental authority, for it was a principle of civil liberty, developed through the ages by the constant struggle against arbitrary rule, that governments derive "their just powers from the consent of the governed." This had been the foundation of colonial resistance to the tyrannical acts of the English Ministry, and in the Declaration of Independence it had been prominently asserted as a right which authorized the establishment of a new nation. The principle had been recognized in the Confederation, for the authority of the central government had been granted by the States—the governed.

Under the Constitution the governed were no longer the States; they were the individuals composing the States. "The People of the United States" must, therefore, be the source of power; they must be made parties to the agreement before the government could justly exercise authority over them as individuals; their consent would make possible the remedy which was sought; and this attained, perfect union was assured.

This principle became the controlling idea in the Convention. And when by their solemn act the people adopted the Constitution and became parties to the national compact, a government was established which originated, as Daniel Webster declared, "entirely with the people and rests on no other foundation than their assent"—a government "of the people, by the people and for the people," a government of a union which the test of civil war has proved to be indivisible. It is the announcement of this principle and its application which is contained in the Preamble of the Constitution. For it

asserts that the fundamental law and the government thereby established are the work of the people, and that the powers conferred were not delegated by sovereign States, but by the individuals of the United States, and it confidently declares the purposes of the governed and the benefits which would result in these memorable words:

> We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

CHAPTER II.

THE LEGISLATIVE BRANCH.

1. CONGRESS.

The National Legislature.—Among the first decisions reached in the Constitutional Convention was the division of the Government into three branches—the Legislative, Executive, and Judicial—and it was provided that:

> All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives. (Art. I, Sec. 1.)

Parliament.—At the time of the Constitutional Convention the English legislature was a parliament, consisting of two "houses": the "Lords" and "Commons." The House of Lords was composed of men theoretically possessing great ability, deriving their office not from the people, but from birth or appointment by the crown, and having in the main a life tenure. Conservative, dignified and removed from popular agitation and influence, it was a preserver of traditions and an opponent to the advancement of democratic principles. The House of Commons was composed of elective representatives, men of the people, chosen for short or uncertain periods, and swayed by the passions of their constituents. Radical, hasty, influenced by popular clamor, it was antagonistic

to ancient privileges and the promoter of the growing power of the people.

American Legislatures.—In the several States there prevailed practically the same system, but under the Confederation the legislature consisted of a single "house." One of the earliest and bitterest contests of the Convention of 1787 arose out of the discussion as to the form of the national legislature.

The Virginia Plan.—The "Virginia Plan" provided for a legislature consisting of two houses, the members of the lower body to be elected directly by the people, while those of the upper house were to be chosen by the lower house from persons nominated by the legislatures of the respective States. The representation in both houses was to be proportionate to population; and upon all questions the votes of the individual members were to be counted, a practice contrary to that of the Continental Congress and the Congress of the Confederacy. This proposition was opposed by the smaller States, which viewed it as an attempt to give the control of national affairs to the larger States. It was, in fact, a plan to secure representation to the people as individuals and to remedy one of the defects existing under the Articles of Confederation.

The New Jersey Plan.—The "New Jersey Plan" proposed a continuance of the Congress of the Confederacy. It was intended to preserve the full power and influence of each State, jealous of its own rights and envious of the growing importance of its neighbors.

Connecticut Compromise.—It was early decided that there should be two houses. The next point of discussion was the basis of representation,—whether the unit of rep-

resentation should be the State or the individual. A solution was presented by the Connecticut delegates, who were familiar with a legislature of two houses, the members of which were chosen in different ways. They proposed that the members of the lower house should be elected by the people in proportion to the population of the several States—*i.e.*, individual representation ; while in the upper house each State should have an equal number of members—*i.e.*, State representation. This is known as the "Connecticut Compromise."

Representation.—It was finally provided that :

The House of Representatives shall be composed of members chosen every second year by the people of the several States, . . . (Art. I., Sec. 2, Cl. 1.)

The Senate of the United States shall be composed of two Senators from each State, chosen by the legislatures thereof, for six years ; and each Senator shall have one vote. (Art. I., Sec. 3, Cl. 1.)

Thus there was an apparent copying of the English system in the establishment of a Congress which resembled Parliament in having two houses, the members of which differed as to manner of election and term of office, and only one of which houses directly represented and was responsible to the people, as individuals. And yet this copy is not real, for in England the House of Lords represents a class of society, while the Senate represents all the people of the State as a political body.

Qualifications of Members.—The framers of the Constitution recognized a difference between these two houses, not only in composition, but also in the character of the members. It was expected that the Senate would be the

more dignified body, and would demand men of greater learning, broader views and more extended experience than those of the lower house. Provision was made to meet this expectation by requiring as qualifications that:

> No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, . . . (Art. I., Sec. 3, Cl. 3.)
>
> No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, . . . (Art. I., Sec. 2, Cl. 2.)

It will be observed that in the case of both Senators and Representatives extended citizenship is made a necessary qualification, to the end that their interests may be to the fullest degree in sympathy with the welfare of the nation. And to further emphasize this sympathy, and extend it to the States, it is required that each shall, "when elected, be an inhabitant of that State" in or for "which he shall be chosen." (Art. I., Sec. 2, Cl. 2, and Sec. 3, Cl. 3.) And further, in order to secure the time and talents of such members to the legislative business of the government, it is provided that:

> No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, . . . ; and no person holding any office under the United States shall be a member of either house during his continuance in office. (Art. I., Sec. 6, Cl. 2.)

This provision prevents the possibility of dishonest practices on the part of officials who, as such, might be responsible to themselves as members of Congress, or who in the latter capacity might determine the compensation

which they would receive in the other. Neither can a Senator or Representative be appointed as an Elector for the election of President. (Art. II., Sec. 1, Cl. 2.) The reason for this provision will be considered under the Executive Branch.

Apportionment.—The next difference in the Constitutional Convention arose over the method of apportioning the Representatives among the several States. In this controversy the parties were no longer the large and the small States, but those who favored and those who opposed slavery. The "Virginia Plan" had provided for representation proportionate to the population of the States, and this was interpreted by the delegates from the States which depended chiefly on slave labor to include slaves as well as freemen. On the other hand, the States whose citizens had few slaves claimed that, inasmuch as slaves were not entitled to any political privileges, such an interpretation was illogical and would give greater political power to the free voter in the "slave" State than to his brother in the "free" State—a principle opposed to the ideas of civil equality. This question became involved with another—the basis of taxation. It is a principle of justice that those who enjoy benefits must bear the attendant burdens. So the "free" States insisted that taxation and representation should be apportioned on the same basis, and that if the slave was to be counted for the purpose of representation, so he must be counted for the purpose of apportioning taxes. This was opposed by the "slave" States, and a crisis was imminent when Madison proposed a solution in the form of a compromise by which it was determined that:

> Representatives and direct taxes shall be apportioned among the several States . . . according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. (Art. I., Sec. 2, Cl. 3.)

Ratio.—The first apportionment of such representation was made on the basis of one Representative for every thirty thousand people (*Id.*). Thus, if a "free" State had a population of three hundred thousand persons, and a "slave" State a population of two hundred and ten thousand free persons and one hundred and fifty thousand slaves, a total population of three hundred and sixty thousand persons, each State would be entitled to ten Representatives and be liable to pay an equal amount of a national tax. Lest any State should be unrepresented by reason of a population of less than the ratio, it was further provided that "each State shall have at least one Representative" (*Id.*).

This method of apportioning Representatives and direct taxes continued until after the Civil War, when, in order to complete the work of granting full rights to the freedmen, Amendment XIV. was adopted, the second section of which provides that:

> Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote . . . is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, . . . except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Each State, therefore, is entitled to representation proportionate to the whole number of its citizens, and cannot be deprived of such right, save by its own act in unduly restricting political privileges.

Increase of Members. — The Constitution does not fix the number of members in either house, but leaves it subject to change. Such changes have occurred as the country has grown in population, and the ratio of representation has been increased after each national census,* taken in pursuance of the Constitution (Art. I., Sec. 2, Cl. 3). until it is now (1902) over one hundred and ninety-four thousand, notwithstanding which the House has grown from a body of sixty-five in the First to one of three hundred and fifty-seven in the Fifty-seventh; and by the last apportionment (1901) it will have three hundred and eighty-six members in the Fifty-eight Congress. A similar growth has also occurred in the Senate. Although no change has been made in a State's representation in the upper house, each State admitted to the Union has added two members to that body: so that it has increased from a membership of twenty-six to ninety.

Term of a Congress.—The first Senators elected were, in pursuance of the Constitution (Art. I., Sec. 3, Cl. 2), divided into three classes with terms expiring in two, four and six years respectively. As a result, one-third of the Senate has to be renewed every two years (*Id.*). This fact, together with the provision for the election of Representatives, determines the life of a Congress as two years.

Sessions.—A Congress begins on the 4th day of March

* Taken in 1790, and each tenth year since.

in every odd-numbered year and continues until the second succeeding 4th day of March. Such "Congress shall assemble at least once in every year" (Art. I., Sec. 4, Cl. 2). This meeting is called a *session*, and the regular date for its commencement is the first Monday in December. A Congress has thus two sessions. The first, called the "Long Session," commencing on the first Monday in December in an odd-numbered year, continues until the next succeeding spring or summer. The second, or "Short Session," commencing on the first Monday in December in an even-numbered year, continues until the next 4th day of March. As a Representative is elected in an even-numbered year, it happens that more than a year elapses between his election and the first session of the Congress to which he is elected. But this is not always so. If necessary, Congress can be assembled by the President as soon as it comes into being; for he can, "on extraordinary occasions, convene" Congress (Art. II., Sec. 3), so that there may be more than the two regular sessions. This happened in the Fifty-fifth Congress, in which there were three sessions.

Place of Meeting.—Congress convenes in the Capitol in the City of Washington, the two houses meeting in rooms in the opposite wings of the building, known as the Senate Chamber and Hall of Representatives. But whenever for any cause it would be dangerous for the members to meet at their usual places, the President is authorized to convene Congress at any other place he may deem proper.

Change in "House."—It is possible that there may be in each Congress a House of Representatives composed of

members entirely different from those of the preceding Congress. Theoretically, each "House" is *new*.

The framers of the Constitution looked upon the House as the direct channel for the expression of the public will. Hence it has often happened that the membership of that body has so changed that the majority in one House has been of opposite political faith to that of the preceding one, as the popular mind has been changed by some crisis.

Stability of Senate.—With the Senate this is not so. This body is never *new*. Only one-third of its members is changed at the same time, so that it is continuing, two-thirds being composed of men of legislative experience. As a result, the Senate is not materially affected by change in popular sentiment.

Characteristics Contrasted.—Thus we may view the two houses of Congress as reflecting the general character of the two houses of Parliament—the one, the House, vigorous, active, progressive, full of popular spirit and often chosen to meet the demands of present conditions; the other, the Senate, calm, slow and bound by tradition; the one, a spur and promoter of legislation, the other, a check and curb.

2. *SENATORS AND REPRESENTATIVES.*

Election.—The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators. (Art. I., Sec. 4, Cl. 1.)

Under this provision Congress can divide States into

Congressional Districts and take any action relative to the election of members except to change the place of electing Senators, or, under Clause 1 of Section 2 of Article I., to prescribe the qualifications of electors of Representatives. Congress has, however, left these matters almost entirely to the several States, only prescribing a few rules for the purpose of uniformity.

Senators.—Senators are elected by the legislatures of the States. Such election takes place on the second Tuesday after the organization of the legislature chosen next before the expiration of the preceding senatorial term. In each house of the legislature the members present, by a *viva voce* vote, name a person or persons for Senator, and the name of the person receiving the greatest number of votes is entered upon the journal of that house. At noon on the next day the members of both houses meet in a joint session, at which the journals of the two bodies are read, and if the same person received a majority of the votes in both houses he is declared elected Senator. However, if no person receives such majorities, the members in joint session proceed by a *viva voce* vote to choose a Senator, a majority of all the members being necessary for an election. If such a majority is not secured at the first session, the two houses meet jointly at noon on each succeeding legislative day and take at least one ballot for Senator until one is elected or the legislature adjourns. If a vacancy in the representation of any State in the Senate occurs by reason of death or otherwise, such vacancy is filled by the legislature in the same manner as a Senator is regularly elected. But if such vacancy should occur during a recess of the legislature, the gov-

ernor of such State may fill the vacancy by a temporary appointment until a Senator is elected at the next session of the legislature (Art. I., Sec. 3, Cl. 2); but the governor cannot make such an appointment after the legislature has failed to elect. A person so elected or appointed receives from the governor of the State a certificate of his election or appointment directed to the President of the Senate of the United States.

Representatives.—The number of Representatives to which each State is entitled is determined by Congress after each decennial census. Congress has fixed the time of their election as the "Tuesday next after the first Monday in November" in every even-numbered year. In States entitled to more than one Representative, they are elected by "districts composed of contiguous territory and containing as nearly as possible an equal number of inhabitants," which districts are determined and the boundaries fixed by the legislatures of the States. When, in a reapportionment, a State's representation is increased, the additional Representatives are chosen by vote of the whole State, until the State is redistricted. They are called *Representatives* or *Congressmen at Large*.

Gerrymandering.—This division of a State into Congressional Districts has often led to a political process called "gerrymandering," whereby the dominant party in the State has so manipulated the division as to secure to itself the greatest possible number of Representatives. The scheme, though originating in Virginia, is named from Elbridge Gerry, during whose term as Governor of Massachusetts, that State was so redistricted that one of the districts resembled a salamander, which a political oppo-

nent called a "gerrymander." The process consists of uniting hostile sections into one district, or of adding to a district in which the sentiment is evenly divided a section in which the friendly votes are sufficient to give the control to the dominant party.

Residence.—Although by the Constitution a Representative is only required to be a resident of the State from which he shall be chosen, custom has added that he also reside in the district from which he is elected. This is often criticised for the reason that it limits selection and excludes many persons of prëminent ability because of residence in districts which the opposite political party dominates. It is contrary to the English custom, which permits the election of a member of the House of Commons from a political division in which he is neither a resident nor has property. But the American custom makes the representative of a district acquainted with the needs and wishes of his constituents and guarantees a more general representation by precluding the possibility of all the representatives being chosen from one class or section of a State—a condition contrary to the theory of a republican form of government.

Qualifications of Voters.—It is a notable fact that Representatives are the only members of the national government elected directly by the people. For the purposes of their election it is provided that

> the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature. (Art. I., Sec. 2, Cl. 1.)

This is a matter beyond the control of Congress and entirely within the power of the States to determine.

Hence the qualifications vary. In some States only males twenty-one years of age possess the electoral privilege. In others it belongs to both males and females. In some there are additional requirements, such as education or property or poll-tax. But whatever such qualifications may be, they must be uniform in their application throughout the State, and the right

> to vote shall not be denied or abridged . . . on account of race, color, or previous condition of servitude. (Amendment XV.)

Vacancies.—If vacancies occur "in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies" (Art. I., Sec. 2, Cl. 4). The rules governing such election are the same as in the case of an original election. The person so elected serves only during the balance of the unexpired term. All Representatives-elect are given certificates of election under the seal of their State, addressed to the House of Representatives.

Delegates.—Besides Senators and Representatives, there is in each Congress one delegate from each Territory, who has "a seat in the House of Representatives, with the right of debating, but not of voting." Such delegates are there to present to Congress the needs and further the interests of the Territories which they represent.

Review of Elections.—The certificates of election of Senators and Representatives are not absolute guaranties of seats in Congress. For, if there have been frauds or illegal practices in their election, the house to which they have been chosen has the power, after investigation, to set aside such election; for:

Each house shall be the judge of the elections, returns and qualifications of its own members, . . . (Art. I., Sec. 5, Cl. 1.)

Oath.—Before these various Representatives take their seats they are required to take an oath to support the Constitution of the United States (Art. VI., Cl. 3). This is administered to Senators by the President of the Senate, the new Senator being presented for that purpose by the other Senator from his State, called his "colleague," and to Representatives and Delegates by the Speaker of the House of Representatives. The oath is as follows:

I [name] do solemnly swear [or affirm] that I will support and defend the Constitution of the United States against all enemies foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

The action of former Senators, Representatives and certain federal and state officers in taking up arms against the United States during the Civil War led to the adoption of Section 3 of Amendment XIV., to give effect to which a further, or "iron-clad," oath was administered for several years. The provisions of this Amendment have, however, been repealed, and only the regular oath is now required. And "no religious test" or oath can be required from any member of either house of Congress or of any federal or state officer (Art. VI., Cl. 3).

Compensation.—Each Senator, Representative and Delegate receives as compensation the sum of five thousand

dollars per year, together with a mileage fee of twenty cents per mile in going to and returning from each regular session. The Speaker of the House of Representatives receives eight thousand dollars per year. In addition to his regular salary each member is allowed a fixed sum for newspapers, stationery, clerk hire and other necessary expenditures.

Detention of Members.—The Constitution contains two provisions for the personal protection of Members of Congress. The first is that:

> They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; . . . (Art. I., Sec. 6, Cl. 1.) *

This is but an enactment of an old English law for the protection of members of Parliament. As early as the reign of Edward I. it was declared unbecoming for a member of the king's council to be "distrained" in time of its session, and in 1433 a statute was passed exacting a penalty from anyone who molested members coming to or returning from Parliament. This section extends to arrests for all civil causes, detention as a witness or summons as a juror, and is not lost by a stoppage on the route for rest or on account of illness. Its object is not merely the protection of the individual member, but is for the convenience of the Government, which should not be deprived of the counsel and presence of legislators for any but the most serious reasons. Incidentally, this provision is a safeguard against the passage of noxious legislation

* For definitions of Treason, Felony and Breach of the Peace, see pages 158, 215.

by the detention or removal, under legal forms, of men whose presence would make such action impossible.

Freedom of Debate.—The second provision is that "for any speech or debate in either house, they shall not be questioned in any other place" (*Id.*). This is also an English principle. In 1621 a statute of the House of Commons declared that:

> Every member hath freedom from all imprisonment . . . for or concerning any bill, speaking or declaring of any matter or matters touching the Parliament or Parliament's business.

The same principle was confirmed by the Bill of Rights. This provision makes it possible for a member to criticise any matter or person who may be before Congress, without fear of being charged with slander before a court, and is one of the strongest legislative provisions by reason of the perfect freedom which it guarantees.

Adjournments Limited.—Having so provided for the protection of the members, it was expected that each house would devote its time to the business of the Government. And, that each branch should have the constant presence of the other, it was provided that:

> Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting. (Art. I., Sec. 5, Cl. 4.)

3. ORGANIZATION AND METHOD OF WORK.

Presiding Officers.—The Vice President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided. (Art. I., Sec. 3, Cl. 4.)

The House of Representatives shall choose their Speaker . . . (Art. I., Sec. 2, Cl. 5.)

These provisions present a striking resemblance to the English custom. The presiding officer of the Senate is not a member of the body over which he presides nor is he chosen by that body, but, like the Lord Chancellor, derives his position by virtue of his office. He possesses only the right of a "casting" or deciding vote in the case of a tie—that is, when the votes for and against a question are equal. In the House of Representatives, as in the House of Commons, the presiding officer is a member of the body, elected by his fellow-members and known by the name of "Speaker," a title derived from that of the person formerly selected by the House of Commons to sign and present its "petitions," as bills were called, or other communications from that body to the king. He is entitled to vote upon all questions before the House.

The Speaker.—These officers are expected to perform only the usual duties of presiding officers, but the Speaker has gradually absorbed powers until he is one of the most important officers of the Government. He has great influence with the House, and to a large extent controls legislation. He is usually the most capable member of the party in the majority, possessing great experience in legislation, familiarity with parliamentary procedure and knowledge of men and affairs.

Other Officers.—Each house possesses the power to choose its other officers (Art. I., Sec. 2, Cl. 5 and Sec. 3, Cl. 5). Besides the President *pro tempore* of the Senate (an officer who presides in the absence of the President of that body), the officers in each house are a Clerk, Sergeant-at-Arms, Chaplain, Postmaster, Librarian and

Doorkeeper, each of whom has one or more clerks and none of whom is a member of either body. The *Clerk* takes charge of the transacted business of his house, keeps the roll of members, preserves the minutes, is the custodian of bills and, in a word, has general management of the routine work. The *Sergeant-at-Arms* is the police officer and messenger of the house. He acts for the body, and disobedience to him is disobedience to the house. In the House his symbol of office is the "mace," and its appearance in his hands is generally sufficient to quell the greatest disorder and restore quiet. He is also the paymaster of his house. The *Doorkeeper* has charge of the rooms in which the sessions are held and the galleries where the public assembles to listen to the debates. These officers are usually nominated in a "caucus," or meeting, of the members of each political party, held before the assembling of Congress, and are then chosen by the votes of the body in open session.

Quorum.—No business can be transacted in either house without the presence of a quorum, which consists of a majority of the members elected to that body. (Art. I., Sec. 5, Cl. 1.)

> But a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide. (*Id.*)

The object of these provisions is to secure in each body the presence of a sufficient number of its members, so that business may receive proper consideration. It is a recognition of the principle that all acts should be those of the majority. It insures the presence of a quorum by giving

to a few members—in the House fifteen—the power to cause absent members to be arrested and brought before the House by the Sergeant-at-Arms. This is known as a "Call of the House."

Counting a Quorum.—The necessity of a quorum has often been taken advantage of by members hostile to the dominant party, and oftentimes in the case of a close vote a sufficient number of members have left the room to reduce the number actually present to less than a quorum. Formerly a quorum was determined by the number of votes cast on a question, and it was possible for members to remain in their seats and not answer as their names were called, thus defeating by silence what they were powerless to defeat by open methods; for, if less than a quorum responded to the roll-call, the transaction of business was suspended, although enough members might be visibly present to constitute a quorum. This led to the adoption of a rule whereby all members present can be counted whether they vote or not. And a further rule provides that when all such members have been counted, if there is still no quorum, there may be had a "Call of the House," the arrested members being given the right to vote upon the question before the House.

Formalities of Organization.—The first meeting of the House is presided over by the Clerk of the previous House, who calls the roll of the members-elect, and, having ascertained the presence of a quorum, directs the election of the Speaker. Oftentimes several ballots have to be taken before an election is secured. As soon as he is elected, the Speaker takes the oath of office, which is

administered by the Representative longest in continuous service as a member. The roll of the House is then called, and the Speaker administers the oath of office to the members. It is then usual to send a committee to inform the Senate that the House is organized, and to appoint another committee, which, in conjunction with a similar one from the Senate, waits upon the President and informs him that Congress is ready to receive any communication that he may be pleased to make.

Drawing Seats.—At an early time in the session occurs the drawing of seats. These are arranged in semicircular rows facing the Speaker's chair, and are equal to the number of members and delegates. A quantity of small balls is prepared, each having a number corresponding to a number on an alphabetical list of the members. These are thoroughly intermixed, and drawn from a box by an attendant, and as each member's number is drawn he selects his seat. The members of the same political party usually sit on the same side of the House, and it is customary to permit the members longest in service to have first choice of seats. While this is going on in the House, a similar action is occurring in the Senate, where the new members are sworn in by the president of the Senate and seats are assigned.

Committees.—After the officers of the two houses have been selected, the committees are appointed. This is a very important matter, for upon their work depends, to a large extent, the usefulness of Congress. These committees are many in number and various in size, and are intended to have jurisdiction of all subjects which come before their respective houses. Thus in the House the

Committee on Ways and Means has control of matters relating to revenue and the bonded debt of the United States; the Committee on Appropriations has charge of matters pertaining to the support of the different branches of the Government. There are also committees on Foreign Affairs, the Judiciary, Military Affairs, Banking and Currency, Railways and Canals, Territories, Insular Affairs, District of Columbia, Pensions, Post Offices, Coinage, Weights and Measures and many others. In the Senate are the Finance and Appropriations Committees, corresponding to the Committees on Ways and Means and Appropriations of the House, the Foreign Relations Committee and many others with jurisdictions similar to those of the House.

Method of Appointment.—In the Senate these committees are appointed by the body itself, but in the House they are usually appointed by the Speaker. This is a source of great power to him, for he is enabled to exert great influence upon legislation by the selection of men holding views similar to his own for the prominent positions on important committees; but it is customary to give the opposing political party a minority representation on each committee. In each house the member first named on a committee is its chairman, and those of the most important committees possess great control over legislation. Thus the Chairman of the Committee on Ways and Means is, after the Speaker, the most influential member of the House. He is considered the leader of his party on the "floor." He is intrusted not only with the management of the business of his committee, but also with many other matters pertaining to the

general conduct of work and the control of parliamentary tactics.

Work of Committees.—To these committees are referred every measure introduced into either house of Congress. Being small bodies, they are able to give close attention to the questions presented, and by reason of training in special lines are enabled to exercise better judgment than could be done by the members of the house acting as a whole. Thus legislation is expedited, and thousands of useless measures are "killed in committee"—that is, cast aside and not reported. In the exercise of their duties the committees may call in the assistance of experts, may take testimony and compel the attendance of witnesses, and conduct any investigation which the importance of the matter before them may warrant. Upon their report depends largely the action of their house; for although their decision is not final, yet, in the main, their judgment is followed.

Rules.—The proceedings in each house are controlled by the rules which it makes for itself (Art. I., Sec. 5, Cl. 2). These are practically the same in both bodies, and through the experience of years have grown into an intricate system, which not only directs the progress of business, but affects the decorum and conduct of members (*Id.*).

Method of Legislation.—The progress of a bill, or proposed draft of a law, through the House is substantially as follows: It is introduced by being presented to the Clerk, indorsed with its title and the name of the member introducing it. The Clerk gives it a number, and when reached under the proper order of business it is

read the first time. It is then handed to the Speaker, who puts the question whether it shall be read a second time. If it is so decided, the bill goes back to the Clerk to await its second reading. This must regularly be on another day. When it is again read, it is sent to the committee which has charge of its subject. Here it is examined, and with or without amendments is reported to the House. It is then considered in what is called a "Committee of the Whole" (an informal organization of the whole House for the purpose of discussion, over which some member, other than the Speaker, presides), where it may be debated and further amended. It is then read a third time, and the question is put, "Shall the bill pass?" If it receives a majority vote, it is signed by the Speaker and attested by the Clerk, with a note of the date of its passage. This method, with but slight differences, is pursued in the Senate. A bill, after its title, begins with the following words: "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That" . . .

Filibustering.—The progress of a bill is not always easy. At every point it may meet opposition. Amendments, delays, all the tricks of parliamentary tactics may be employed to impede it, and oftentimes an "active minority" may be able to defeat the will of the majority. Such methods are called "filibustering." They are not usually successful, however; for by the rigorous enforcement of the rules a Speaker is able to guide a measure through the fiercest opposition. Even debate can be cut off in the House by a call for the "previous question," which is undebatable, and being adopted brings up the measure

for immediate vote. In the Senate there is no way to stop debate, and it is possible for an opposition to consume a whole session in the discussion of a question. This is an instance of "senatorial courtesy," a sentiment arising from the dignified character of the body, which excludes all limitations upon the official conduct of a Senator and concedes to him freedom in accordance with the dignity of his position.

Records of Proceedings.—Pursuant to Article I., Section 5, Clause 3, a record of the proceedings in each house is kept in a "journal," in which is set forth the roll, bills introduced, motions, resolutions, rulings of the presiding officer, business, and votes taken with the name and vote of each member when required by one-fifth of the members present. In addition to this record there is published each day during the session a paper called the "Congressional Record," in which is a *verbatim* report of the incidents of the preceding day. This is distributed according to law among certain officials, Senators and Representatives and libraries, and upon payment of a small fee to the public at large.

Interaction of Houses.—In its work neither house is independent of the other. While each acts by itself, both must agree in the result, or action fails. Thus, a measure which has passed one house may be rejected by the other, or a bill may be amended in one house after its passage in the other, in which case it must repass the first body in its amended form. Often, for the purpose of hastening important legislation, the same bill is introduced simultaneously in both houses, when it is called a "joint bill," a "joint resolution" or a "concurrent reso-

lution." All these possibilities lead to many complications; and frequent interviews, or, as they are called, "meetings of conference committees," are held and a compromise effected. Thus each house acts as a check on the other. Thus each, reviewing the work of the other, tends to produce better legislation; and while there are often delays which are irksome to the public, and while legislation is often produced which falls short of the popular desire, yet the results are generally satisfactory and the delays are counterbalanced by freedom from radical measures, a characteristic which has marked our national legislation during more than a hundred years.

4. LEGISLATIVE POWERS.

General Limitation.—The fear of a strong central government and the desire to retain all possible powers in the several States were marked political characteristics of the people at the time of the Constitutional Convention. During its entire session the local powers of the States were jealously guarded, and only those were granted to the national government which were general in character, and such as could not be properly administered by the States themselves. Even then the people were fearful of the new government, and among the early amendments added to the Constitution was one which provided that:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. (Amendment X.)

Constitutionality.—It was intended by this amendment to place beyond contradiction the fact that the United

States Government was not one of original powers, but possessed merely those which the Constitution delegated to it. Hence, in considering any question of national legislation or action, the inquiry, "Is it constitutional?" means is there in the Constitution any provision which, under reasonable interpretation, gives the Government authority for the act. From the time of the First Congress every act of legislation has been subjected to this test, and the differences of opinion upon these questions have generally marked the two great political parties of the country—the one, termed "Loose Constructionists," insisting that the Constitution granted not only the powers expressly stated, but all others that could reasonably be inferred from it; the other, called "Strict Constructionists," denying the existence of any implied authority and insisting upon a literal interpretation of the Constitution.

Taxation.—The weakness of the confederacy showed the framers of the Constitution the necessity of extensive and strong powers in the general government. They were familiar with the inability of the confederacy to enforce its requisitions for money and with its resulting helplessness. They felt that there was no more important function of government than that of levying and collecting taxes; for however vast the resources, however extensive the boundaries, however patriotic the citizens, the Government was powerless if it could not compel the use of these resources for its support. They, therefore, provided that:

The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common

defense and general welfare of the United States; . . . (Art. I., Sec. 8, Cl. 1.)

Of this power, Chief Justice Chase said:

To the existence of the States and to the existence of the United States the power of taxation is indispensable. It is an essential function of government. It was exercised by the colonies and by the states formed therefrom. Under the Articles of Confederation the Government was limited in the exercise of this power to requisitions upon the States. The Constitution changed this condition of things. It gave the power to tax directly and indirectly to the national government.

Direct Taxes.—A *direct tax* is defined by Mill as a charge "which is demanded from the very persons who, it is intended or desired, should pay it." Such taxes are poll or capitation tax, imposed upon individuals at so much a person (literally, "per head"), charges upon lands, personal property, incomes, and the rents and profits of property. In the levying of such direct taxes provision was made that no State should bear more than its share of the burden.

Direct taxes shall be apportioned among the several States . . . according to their respective numbers. (Art. I., Sec. 2, Cl. 3.)

No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herembefore directed to be taken. (Art. I., Sec. 9, Cl. 4.)

When a direct tax is laid, the amount of money to be raised is first ascertained, and the tax is apportioned among the States according to their population at the last census.

Indirect Taxes.—*Indirect taxes* are defined as "those

which are demanded from one person in the expectation and intention that he shall indemnify himself at the expense of others." Such taxes are duties or imposts, imposed upon the importation of goods, and excises, an inland tax levied upon the manufacture or sale of certain articles and upon licenses to pursue certain trades or to deal in certain commodities. In the levying of such indirect taxes it was provided that they should "be uniform throughout the United States" (Art. I., Sec. 8, Cl. 1). By "uniform" is meant that such taxes shall be the same in one State as in another, regardless of population, a characteristic in which they differ from direct taxes. But all articles need not be taxed alike. Thus tobacco may be taxed at one rate, silk at another, while other commodities may be under very different charges, but the charge on each class of articles is the same everywhere.

The Tariff.—Duties and imposts, also called "customs," are charges made upon imports, and are of two kinds—*specific* and *ad valorem*. A *specific* duty is a certain sum charged on each article, regardless of its cost or value, as so much per pound, gallon or yard. An *ad valorem* duty is a charge made at a certain percentage of the cost or value of the article. The list of dutiable goods, with the prescribed charges, is called the "tariff." About the levying of duties and imposts have centered some of the fiercest political struggles of this country; and the character and purpose of the duties imposed have in several campaigns marked the division of the great parties. Civics is not the place to enter into a discussion of the economic features of the subject of duties. That belongs to the study of Political Economy. It will be sufficient

for the present to know that in the division of sentiment caused by this subject there is one party whose members are known as "Protectionists," who insist that under the implied powers of the Constitution the Government has the right to impose duties and imposts, not only to supply revenue for its support, but also to encourage and foster manufacturing and other industries in the country, and for this purpose to raise the charges so high as practically to prohibit the importation of goods. Opposed to this party are the so-called "Free-Traders," who advocate the collection of duties for the support of the Government, but deny that they can be constitutionally imposed for any other purpose.

A modification of "protection" is the reduction of duties upon imports from a country in return for a similar reduction by it upon American goods. This is termed "reciprocity," and is established by treaty (page 132). The converse, called "retaliation," is the increase of duties upon imports from a country which has increased its duties upon American articles. This is done by the President, to whom the power is usually given by Congress.

Collection of Duties.—In order to collect these duties certain places along the coasts and borders of the country are designated as *Ports of Entry*, where are government buildings called *Custom Houses*, in charge of officers known as *Collectors of Customs*. At these places cargoes are examined by the Collector or his agents, called *Inspectors*, and duties are computed and collected upon importations according to the schedules fixed by law. Dutiable articles constitute a long list, and consist of so-called

luxuries, as diamonds, works of art, silks and the like; certain necessaries, as clothing; and a large number of other articles, "raw" and manufactured.

Internal Revenue.—Excises constitute what is known as the *internal revenue* of the country, and are taxes levied upon the manufacture and sale of liquors and tobaccos, and frequently upon other articles, such as telegrams and legal and commercial papers, upon which have to be affixed revenue stamps varying in value from a fraction of a cent to many dollars. Matters pertaining to the sale of these stamps and the collection of this revenue are in the charge of government officers called *Collectors of Internal Revenue.*

The National Income.—These taxes, direct and indirect, constitute the sources of the national income. The receipts are nearly always sufficient for the demands of the Government, and at times have been so large as to rapidly diminish the great debts incurred in the several wars in which we have been engaged. Indeed, so great have been the indirect revenues that, except in a very few instances, no direct taxes have ever been levied.*

Commerce.—Intimately connected with this power of Congress is that "to regulate commerce with foreign nations, and among the several States, and with the In-

* The principal direct taxes levied by the general government were the following: July 14, 1798, two millions of dollars; January 9, 1815, six millions of dollars; August 5, 1861, twenty millions of dollars, to be levied annually thereafter. In the latter case the taxes were not collected by officers of the United States, but each State paid its portion from the moneys in the State treasury. This tax was collected but once, and the act was suspended. In 1891 the United States refunded to the States the sums which they had paid on the tax of 1861.

dian tribes" (Art. I., Sec. 8, Cl. 3). "Commerce," as here used, means not only trade, but also intercourse and navigation. Before the Constitution all such laws were enacted by the States, and the greatest confusion resulted. But because the regulation of commerce was a matter of general interest, and for the purpose of uniformity, it was delegated wholly to the general government. Under this section Congress has power to appropriate moneys to render navigation less dangerous, to build lighthouses, to provide life-saving stations, improve harbors, dredge rivers, establish quarantine regulations, license and require the employment of licensed pilots, make surveys of the coasts, issue charts and maps, and perform many other acts of a similar nature.

Shipping Regulations.—By virtue of this power Congress has made regulations requiring American-owned vessels to be *registered*, an act which accords to such vessels privileges not extended to foreign ships, such as to engage in the coasting trade and to be protected by the Government if seized or injured by a foreign power. So, also, a vessel upon leaving port is required to take out a certificate called a *clearance*, issued by the collector of customs, showing that all harbor fees have been paid and regulations observed. Upon arrival at an American port, a further regulation requires a vessel to be *entered*—that is, to report to the collector, present a statement of its cargo and deliver the clearance which it received from the last port. This last, however, is not generally required of American vessels engaged in the coasting trade. All other laws relative to the merchant marine of the nation rest upon this section.

Interstate Commerce.—Under this section laws have also been passed controlling railroads whose business is conducted in two or more States, prescribing rules for their management, construction and rates for freight. And, finally, it is from this section that Congress derives its authority to regulate all intercourse and traffic with the Indians.

Federal Taxes and State Taxes.—The power to levy duties and imposts and to regulate commerce belongs peculiarly to Congress, for it is provided that:

> No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; . . . (Art. I., Sec. 10, Cl. 2.)

And the Supreme Court of the United States has held that the right to regulate commerce is "exclusively vested in Congress and cannot be exercised by a State." This is not true of the right to levy direct taxes. This right is co-existent in state and national governments, and the exercise of it by Congress does not preclude a State from taxing the same property, though the claims of the general government are superior; and if there is not sufficient property to satisfy the demands of both governments, that of the nation has preference.

Restrictions on Taxation.—It should be observed that the purposes for which Congress is thus given the power to tax are "to pay the debts and provide for the common defense and general welfare of the United States" (Art. I., Sec. 8, Cl. 1). The courts have held that taxation purely in aid of personal or private objects is beyond

legislative power, and that Congress cannot even raise a tax for purposes which are within the exclusive jurisdiction of a State.

There is another restriction upon this power of Congress. That is, that "no tax or duty shall be laid on articles exported from any State" (Art. I., Sec. 9, Cl. 5). The reason for this provision is that the extent of the country is so great and its resources so varied that a uniform burden of export duties would be practically impossible, and the interests of the various States would be constantly demanding recognition, which would destroy trade stability and result in the greatest confusion. Furthermore, such taxation would tend to impede the growth of industries by making the charges upon their products so high as to render competition in a foreign market impossible. Uniformity in commercial regulations is assured by the provision that:

> No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another. (Art. I., Sec. 9, Cl. 6.)

Power to Borrow.—The revenues just considered are adequate in times of peace and usual prosperity. But there arise conditions when these are insufficient. The Civil War created such a condition. So, also, a crisis may arise when the revenues are depleted and time will not permit the collection of sufficient taxes to prevent national embarrassment. To provide against such an emergency, Congress can "borrow money on the credit of the United States" (Art. I., Sec. 8, Cl. 2).

This is a very important provision. Chief Justice Marshall said:

> No provision can be selected which is of more vital interest to the community . . . No power has been conferred by the American people on the government, the free exercise of which more deeply affects every member of our republic. In war, when the honor, safety and independence of the nation are to be defended, when all its resources are to be strained to the utmost, credit must be brought in aid of taxation, and the abundant revenues of peace and prosperity must be anticipated to supply the exigencies of the moment.

Coinage; Weights and Measures.—An important power of Congress is the one:

> To coin money, regulate the value thereof, and of foreign coin, and fix the standards of weights and measures. (Art. I., Sec. 8, Cl. 5.)

The trading instinct has made necessary some medium of exchange. For this the precious metals have been found the most practicable, and gold and silver are now generally used, with nickel and copper for small values. At first these media passed by weight ; later they were made into coins—that is, stamped into shape and marked with some device significant of their value. This, however, was not an absolute guaranty of value, and so governments took upon themselves the power to coin money, and the stamp affixed to a coin is a pledge by the government that the value of the coin is what it purports to be.

Monetary System.—At the time of the adoption of the Constitution there was no fixed monetary system in the country. Spanish milled dollars, English shillings and other foreign coins were in common circulation. The

need of a uniform system was evident. This could not be obtained by leaving it to the States, for each might adopt a different standard of weight or purity. So the right to coin money was granted to Congress, together with the power to regulate the value of foreign coins in exchange for those of this country. Uniformity resulted. The dollar is the same in all sections of the country, and trade is carried on freely without the necessity of testing the purity or weight of coins. The Government does its coining in buildings called *mints*, of which there are several, in different cities. The principal one is at Philadelphia, Pa.

Systems of Weights and Measures.—Although uniformity in weights and measures is within the power of Congress, it has never exercised this power beyond adopting for the use of custom houses the English system, and legalizing the use of the metric system. The English system is in general use throughout the country, each State government compelling the instruments used within its jurisdiction to conform to standards furnished by the general government. In scientific work, however, the metric system is largely in use, and there is a growing opinion that for the sake of international trade it should be made the standard of the country.

Counterfeiting.—The power of Congress over the money of the country would be practically useless were it not connected with another power:

> To provide for the punishment of counterfeiting the securities and current coin of the United States. (Art I., Sec. 8, Cl. 6.)

To *counterfeit* is "to copy or imitate without authority

or right, and with a view to deceive or defraud by passing the copy for the original or genuine." It is counterfeiting even to issue a coin of equal weight and purity with that of the Government. Under the power to borrow money there have been issued from time to time bonds or promises of the Government to pay certain sums of money at certain times. These, and the paper currency of the Government, which is constantly in circulation, constitute the securities of the United States. Besides these, there are postal and internal revenue stamps. The chief value of all these depends upon their genuineness, and it was to prevent their imitation that this power was given to Congress. Counterfeiting has, therefore, been declared a crime, and severe punishments are prescribed for those detected in it. Nor is this all. The crime is considered twofold, as against the Government and as against the people, for the punishment of which latter offense the several States have also enacted laws.

Postal Service.—Congress has power "to establish post-offices and post-roads" (Art. I., Sec. 8, Cl. 7). In the exercise of this power the Government comes in direct contact with the greatest number of people. The handling of the mails is a matter too extensive to be conducted satisfactorily by private enterprise. Formerly communications were carried by slaves or other messengers; but the development of trade, necessitating prompt and safe transmission of mails, demanded a cheap and certain postal service available to the general public. This could best be obtained by giving its control to the federal government. At the time of the Constitutional Convention this power was not deemed of particular consequence.

Madison spoke of it as "a harmless power which may, perhaps, by judicious management become productive of great public convenience." At that time, however, it took four weeks to send a letter from Philadelphia to Boston and receive a reply, and the rate of postage was six cents for any distance less than thirty miles, with a maximum charge of twenty-five cents for a distance exceeding four hundred and fifty miles.

This provision includes the power to designate the various classes of mail matter and fix the rates of postage, to provide for the transmission of money by post, and through treaties with other nations arrange for the forwarding of mails to any part of the civilized world. Through its extension every hamlet has been provided with a post-office, while in cities and many rural sections there is a free collection and delivery of mail. All roads within a State, including railroads, canals and rivers, become by law "post-roads" when the mail is transported over them, and whatever may be the obstruction to ordinary traffic, whatever mobs may do to impede the passage of trains, free progress is given to the stage or train which carries the United States mail. For some officers of the Government in the conduct of official business the mail is carried free. This is called a *frank* or *franking privilege;* and severe penalties are imposed upon any one using a frank for other than official business. Congress has also made laws to prevent the sending through the mails of explosives, poisonous insects and reptiles; publications, pictures and communications of an immoral character; and other similar abuses of the postal service.

Patents and Copyrights.—Another power given to Congress is:

> To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries. (Art. I., Sec. 8, Cl. 8.)

This is exercised by the granting of letters patent and copyrights. The idea embodied in this provision arose from a desire to encourage invention and research, on the theory that it would increase the general welfare of the country. If new inventions became at once free to the world, it was seen that men would not spend the time necessary to their perfection, and the development of the arts would be impeded. But to give them the exclusive and unending benefit of their discoveries and inventions was deemed unwise, since it would create a perpetual monopoly. Therefore the privilege was limited.

Letters Patent.—*Letters patent* are official documents granting to the recipient or his representatives the sole right for the period of seventeen years to make, use and sell, within the United States and its territories, an article invented or discovered by him. A person making an invention can either obtain a patent at once, or, if he desires further time to perfect his work, can protect himself for the period of one year by taking out a *caveat*. This is done by filing in the Patent Office at Washington a description of his invention. If, however, he desires a patent, he must make application in writing to the Commissioner of Patents at Washington, fully describing his invention and its purpose, with a claim as to its novelty. Oftentimes a model is required to be sent with the

application, and if the invention or discovery is a compound or composition of matter, the applicant may be required to furnish specimens of the ingredients sufficient for an experiment. If, after examination, it appears that the invention is novel or new, a patent will be issued.

Copyrights.—A *copyright* is an exclusive privilege granted to a person or his representatives for the period of twenty-eight years, with the privilege of renewal to himself or his widow or children for the further term of fourteen years, to print, publish, make or sell some literary or artistic production. Copyrights are issued upon books, maps, musical and dramatic compositions, paintings, engravings, photographs, statuary, designs and numerous other productions. In order to procure a copyright the applicant must, before publication, deliver or mail to the Librarian of Congress at Washington a printed copy of the title page of the book or description of the article, upon which an entry of the copyright is made in the official records. Within ten days after the publication he must also deliver to the Librarian of Congress two copies of the book or composition; or if a painting, engraving, statue or design, a photograph thereof. To protect himself in his production he is required to print on the title page of the book or the one next following, or upon some conspicuous place on his map, design, picture or other article, the following: "Entered according to act of Congress in the year [date] by [name] in the office of the Librarian of Congress," or the words, "Copyright [date] by [name]."

Infringements.—The issuance of a patent or a copyright is not an absolute guaranty by the Government of the

rights described in it. For if there has been a prior patent or copyright which covers the same invention or publication, the subsequent patentee or holder of the copyright obtains no right to manufacture, publish or sell the invention or publication, and in case he does so, he is liable to a prosecution for infringement in the United States courts, and the payment of damages.

Exterritorial Power.—Power is also given to Congress to

> define and punish piracies and felonies committed on the high seas, and offenses against the law of nations. (Art. I., Sec. 8, Cl. 10.)

PIRACY is defined as "robbery or forcible depredation on the high seas without lawful authority." On land the crime of highway robbery corresponds to it.

HIGH SEA is the uninclosed portion of the ocean, three miles outside of the general line of the coast. A *felony* is a crime of a high order whose punishment is death or long imprisonment.

LAW OF NATIONS is the system of justice recognized by civilized nations as that which ought to control their intercourse with each other.

The provision relating to offenses against the Law of Nations has been judicially held to apply to offenses on the high seas, but the language of the Constitution would seem to bear a broader interpretation.

This power was given to Congress because such matters were beyond the control of the several States, and because in our relations with other nations the national government is held responsible for all infringements of their rights or those of their subjects; and unless power resided in the Government to punish such offenses, frequent controversies would result and become a constant menace to our peaceful relations.

For the purpose of supplying courts for the trial of piracies and other crimes in violation of the United States statutes, Congress was authorized "to constitute tribunals inferior to the Supreme Court" (Art. I., Sec. 8, Cl. 9). Of these courts and their jurisdiction mention will be made in a later chapter. (See pages 159, 165.)

Citizenship.—One of the perplexing questions during our national life has been that relating to citizenship. For many years it was generally maintained that there was no such distinctive character as that of "a citizen of the United States." The title "citizen of a State" was long recognized, and as such a person was considered a citizen of the United States. But this excepted from citizenship all residents of the Territories and the District of Columbia, these not being States. This question was removed by the adoption of Amendment XIV., which provided that:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. (Sec. 1.)

Citizenship implies correlative obligations; that is, allegiance, or fidelity and obedience on the part of the citizen, and protection on the part of the Government. Thus a citizen of the United States owes to the Government certain duties, as sharing in its defense and support and aiding in the execution of its laws. Since in our relations with foreign powers we are not recognized as individual States, but as a nation, an American citizen is everywhere entitled to demand the support and protection of the full power of the United States.

Determination of Citizenship.—Citizenship is determined in two ways. First, all persons are citizens who are born within the United States and subject to its jurisdiction. This provision includes people of all races and of both sexes, except Indians. It also includes children of Americans who at the time of their birth are temporarily without the country, but it does not include children of foreign representatives or travelers born when the parents are temporarily residing within the United States. Second, all persons are citizens who are naturalized within the United States. Naturalization is restricted by law to persons of the white and black races, and Japanese, Chinese and others are excluded.

Naturalization.—*Naturalization* is the process by which a citizen or subject of a foreign nation is made a citizen of the United States. The only privilege of a native-born citizen which a naturalized citizen does not possess is that the former is qualified to become President or Vice-President of the United States. It may be observed that citizenship and the right of suffrage are separate and distinct rights. The first is granted by the general government, the latter by the States. Citizenship does not depend upon age or sex, two conditions which generally determine the right to vote.

Rules of Naturalization.—For the purpose of conferring citizenship, Congress is empowered "to establish an uniform rule of naturalization" (Art. I., Sec. 8, Cl. 4). This rule is briefly as follows:

A foreigner, residing within this country, known as an *alien*, is required :

1. To declare on oath before a Circuit or District Court of the

United States, or a Court of Record of a State, two years prior to his naturalization, that it is his intention to become a citizen and that he renounces allegiance to every foreign state.

2. He must at the same time swear to support the Constitution of the United States.

3. After a residence of five years within the country and at least two years after declaring his intention, the alien may be fully admitted to citizenship by presenting to one of the above-mentioned courts proof of the declaration of his intention, of his residence within the country for five years and within the State for one year, and of a good moral character ; and

4. He must, at such time and place, renounce any title or order of nobility which he may possess.

The Court, if satisfied, then makes an order declaring him to be a citizen, and there is issued to the applicant a certificate to that effect, which is in every place evidence of his citizenship. This rule applies to both males and females, but there are certain exceptions in the case of aliens not more than eighteen years of age at the time of their arrival in this country, and a further exception which extends citizenship to all children who are minors at the time of the parent's naturalization.

Rights of Citizens.—We have seen the privileges attending citizenship in our relations with foreign powers. There are also domestic privileges.

The citizen of each State shall be entitled to all the privileges and immunities of citizens in the several States. (Art. IV., Sec. 2, Cl. 1.)

A person removing from one State to another is entitled in his new home to all the rights—social, civil and religious—that he would have possessed had he been born there. But as he takes up these new rights, he must relinquish those of his old home. To illustrate: In Kansas, women can vote. In New York they cannot. If a New York woman should remove to Kansas, she would there

be entitled to the right of suffrage. But if a Kansas woman removed to New York, she would not be permitted to vote in the latter State. This principle applies to all relations of life. No State can make laws or grant rights that extend beyond its borders. Nor can it establish rules to prevent people from coming there to live, nor impose upon such new-comers restrictions which are not equally binding upon its own citizens. Lest, however, any question should ever arise, particularly in reference to the freedmen, there was inserted in Amendment XIV. the provision that:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States ; . . . (Sec. 1.)

National Bankruptcy Laws.—Another important power of Congress is to establish

> uniform laws on the subject of bankruptcies throughout the United States. (Art. I., Sec. 8, Cl. 4.)

It is a fundamental principle of business that all men should pay their just debts. In no other way can trade be conducted with profit and security. Yet there come times when under strained financial conditions honest men throughout the country cannot meet their obligations. Pressure by ordinary legal methods would not be able to force collections, but would cause great hardships and oftentimes discouragement, to the debtor, a condition injurious both in business and civil relations. It has therefore been deemed expedient from time to time to relieve debtors under certain conditions by compelling

creditors to receive all a debtor's property in full satisfaction of his debts, even though much less in amount, thus reëstablishing credit and encouraging worthy men in their quest for wealth. Such laws existed in Greece and Rome; England has had them for many years; and before the Revolutionary War bankruptcy laws existed at various times in several of the colonies. In our own national history there have been four acts of this character—in 1800, 1841, 1867, and the present one, which went into effect July 1, 1898.

A Bankruptcy Law is one which discharges a debtor from liability for past debts upon the surrender by him of all his property for the benefit of his creditors.

An Insolvent is a person whose property, other than that concealed or transferred to defraud creditors, is not sufficient at a fair valuation to pay his debts.

A Bankrupt is such a person, when so declared by the courts, after surrendering his property to be applied upon his debts.

Proceedings in Bankruptcy: Bankruptcy is either voluntary or involuntary; that is, the insolvent may file a petition with the court giving a complete list of his property, a statement of his debts, to whom owed, and his inability to pay them and asking to be adjudged a bankrupt; or creditors of an insolvent may file such a petition, in which they set forth the financial condition of the insolvent and the performance by him of certain so-called "acts of bankruptcy," such as secreting his property with the intent to defraud his creditors, and ask that he be adjudged a bankrupt. These petitions must be under oath. After an investigation into the facts presented by the petition, the court may or may not adjudge the person a bankrupt. If it does, the creditors are allowed to prove their claims against him, and usually a trustee of his property is appointed, who, under the direction of the court, takes charge of the bankrupt's property, collects and reduces it to money, and distributes it in the following manner—to pay:

1. Taxes due to the United States, State, county, town or city.
2. Costs of the proceedings.
3. Wages to workmen.
4. Debts.

After such distribution, and within twelve months after he has been declared a bankrupt, the court, if satisfied of his honesty and good conduct, may order his discharge from bankruptcy, after which he may begin again the acquisition of property without fear of its being taken to satisfy his former obligations.

State Bankruptcy Laws.—The power to enact bankruptcy laws is not exclusively vested in Congress. From time to time States have passed such laws, and it has been held by the courts that they are constitutional except when the power is actually being exercised by Congress, or the State laws conflict with those of the national government.

Military Powers.—One of the experiences common to all nations is war. In 1787 we were but recently through with the Revolution, and the necessity of war powers in the general government was very evident. Under the Articles of Confederation, Congress had the right to make requisitions of men upon the several States, but no power to enforce them. Such a system was inherently weak, and might have resulted in disaster had it not been for the patriotism of the people. To remedy this defect, and to take war powers away from the several States, whose hasty action might involve the whole country in conflict, Congress was given power:

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water; [For definition of *letters of marque and reprisal*, see page 196.]

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress. (Art. I., Sec. 8, Cl. 11, 12, 13, 14, 15, 16.)

Army.—Incident to the power to declare war, and necessary to give it effect, is the power to raise and support armies. This includes the raising of troops by enlistment (voluntary enrollment) or by conscription (forced enrollment), the determination of their number and service, purchase of supplies and arms, construction of fortifications, arsenals, barracks and hospitals, instruction of officers and men in schools and otherwise, and the performance of any other acts necessary to organize efficient armies. But, mindful of the powers which armies had assumed in the past and fearful of their repetition, there was added the provision that appropriations should not be made for a longer term than two years. Money is a necessity for an army. Without power of acquiring property, it is dependent for its support upon the people, and they, under this provision, through their representatives, can control its existence by granting or refusing to grant supplies.

Navy.—The power to provide a navy was necessary on account of our extended seacoast and the ambition of the people to engage in commerce. This power includes the enrollment of seamen, the construction of vessels, the establishment of navy yards and docks, the purchase of supplies and munitions, the instruction of officers and

men in schools or otherwise, and the performance of any other acts necessary to make an efficient navy.

The Military Law.—As the army and navy are created by the general government, Congress was given the power to make regulations for their government. This has been done by the enactment of a code of rules, called the "Military Law," which prescribes tactics and arrangement of troops, classifies officers and men, regulates the pay of the service, defines military and naval offenses, and provides for the punishment of offenders by the creation of tribunals called "courts-martial" and by the establishment of their jurisdiction and procedure.

Militia.—There has always been in this country a fear of a large standing army—that is, a disciplined body of men whose sole occupation is military service—and it has been the policy of the Government to maintain only a small military force to do police duty among the Indians and guard the frontiers. If a greater force was needed, it was believed that the best defenders of the country were its citizens who have homes and property to protect. So the main reliance of the country has been upon its militia, which is defined as consisting, with a few exceptions, of "every able-bodied male citizen of the respective States who is of the age of eighteen years and under the age of forty-five years." And this body Congress was given power to call out—to execute the laws of the United States, to suppress insurrections and to repel invasions. By virtue of this provision Congress has conferred upon the President power to summon the militia, which then becomes a part of the military force of the United States and subject to the regulations of the Military Law.

Organization of Militia.—Such a force, composed of men engaged in civil pursuits, would be useless unless armed and trained ; so to Congress was given the power, which it has exercised in various ways, of preparing the people for military duty, particularly by the establishment of uniform tactics and rules for drills and instruction, which action has been further extended by the States. Profiting by the experience of the Revolution, in which the militia often refused to obey officers other than those from their own States, it was provided that the appointment of the regimental officers of the militia should be left entirely to the several States.

Federal Territory.—Congress had not always held its meetings at the same place, but had met at various cities. This made the Government dependent for support and protection upon the State in which it met. These were not always afforded, as when on an occasion Congress was forced to adjourn its sitting at Philadelphia and continue it at Princeton (June 21, 1783). To the end that the Government might have a permanent seat, the State of Maryland granted to it a tract of land on the northern bank of the Potomac, known as the District of Columbia, in which is the capital city, where are located the Capitol, the official residence of the President, known as the "White House," and the offices of the various departments of the Government. Besides this tract there are various places throughout the country where Congress has purchased lands and erected arsenals, navy yards, military posts, forts and other buildings needful for the conduct of the government. Over all these places Congress has exclusive jurisdiction. For it was given power:

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings. (Art. I., Sec. 8, Cl. 17.)

This jurisdiction must be recognized by the State in its cession, otherwise it does not exist. The inhabitants of such places cease to be citizens of the State, but retain their United States citizenship.

General Powers.—The foregoing are, in the main, the specific powers granted to Congress. Other grants will be found in other sections of the Constitution, and they will be considered in their proper places. These powers contain in themselves the right to employ all means necessary to their execution. It has been said:

However government is constituted, infinitely the greater part of it must depend on the exercise of powers which are left at large to the prudence and uprightness of ministers of state.

It was not practicable to enumerate all the means which Congress might employ in the exercise of its powers. But to satisfy any doubt, it was provided that Congress should have power:

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof. (Art. I., Sec. 8, Cl. 18.)

Implied Powers.—About these powers have been waged many fierce political conflicts ; and upon the laws enacted

under them have arisen some of the most noted legal questions of our history. The courts have decided in favor of the existence of broad powers in Congress, and some of the most radical legislation of the country has been enacted and sustained under such decisions. Thus, under the provision granting the power to borrow money, it has been held that Congress could establish national banks, a large part of whose capital must be invested in national securities, by which a demand for them is created and governmental borrowing is made easier. So, also, to carry out the various enumerated powers, the courts have declared that Congress could enact laws incorporating railroads, purchasing foreign territory, making United States notes legal tender, establishing a protective tariff and performing many other acts broader and more important than those authorized by express provision.

POWERS OF CONGRESS.

Civil.

- *Raise revenue*
  - Taxation
    - Direct
      - Capitation.
      - Land.
      - Personal property.
    - Indirect
      - Duties on imports
        - Specific.
        - Ad valorem.
      - Excises.
  - Borrow money.
- *Regulate commerce*
  - Foreign and Domestic
    - Make shipping regulations.
    - Improve harbors.
    - Build lighthouses.
    - Install life-saving stations.
    - License pilots.
    - Establish quarantines, etc.
  - Domestic
    - Between States.
    - With Indians.

- *Maintain business stability*
  - Coinage
    - Minting.
    - Regulation of coin values
      - Foreign.
      - Domestic.
  - Weights and measures.
  - Bankruptcy laws.
- *Regulate postal service*
  - Foreign
    - Carriage of mails.
    - Postage.
  - Domestic
    - Post-offices.
    - Post-roads.
    - Postage.
- *Encourage science and useful arts*
  - Patents
    - Caveat.
    - Letters patent.
  - Copyrights.
- *Define crimes*
  - Exterritorial
    - Piracy.
    - Felonies on the high seas.
    - Crimes against the law of nations.
  - Territorial—Counterfeiting
    - Money.
    - Securities.
- *Regulate citizenship*
  - By defining citizenship.
  - By naturalization.
- *Govern territory* (obtained from States)
  - For seat of government (less than 10 miles square).
  - For forts, magazines, arsenals, dock-yards and other buildings.

Military.

Declare war.

Grant letters of marque and reprisal.

- *Make rules as to captures*
  - On land.
  - At sea.
- *Raise and support armies*, *Build and maintain a navy* — And make rules for governing.
- *Organize and call out militia*
  - Execute federal laws.
  - Suppress insurrections.
  - Repel invasions.

5. LEGISLATIVE PROHIBITIONS.

Divisions.—Besides the granting of powers, certain legislative prohibitions were imposed by the Constitution.

These prohibitions, with the exception of those contained in the Amendments, are found in the ninth and tenth sections of Article I. They may be divided into three classes: (1) Those relating to the federal government only. (2) Those which apply to both federal and state governments. (3) Those relating to the States only.

Some of these have been already considered, as Section 9, Clauses 4, 5 and 6, and Section 10, Clause 2. (See pages 82, 87 and 88.)

(1) The Prohibitions upon the Federal Government.

Slavery.—The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person. (Art. I., Sec. 9, Cl. 1.)

This provision was the result of a compromise in the Constitutional Convention between the delegates of those States favoring slavery and those in which the system was already prohibited or was fast dying out. Its importance passed away with the extinction of slavery by the Civil War.

Habeas Corpus.—The privileges of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it. (Art. I., Sec. 9, Cl. 2.)

This right, as we have seen (page 22), was established early in the growth of English institutions. The power to suspend it had, in the past, been much abused by tyrannical rulers, and it was to avoid such misuse by this Government that the provision was enacted, which did not

entirely destroy the power of suspension, but limited it to times of extreme necessity.

Direct Taxes.—No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken. (Art. I., Sec. 9, Cl. 4. See page 82.)

Appropriations.—No money shall be drawn, from the Treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time. (Art. I., Sec. 9, Cl. 7.)

An *appropriation* is an act providing for the expenditure of a certain sum of money to be drawn from the treasury, and stating the purpose for which it shall be expended. It has been seen that Congress possesses the power of taxation. It follows that this branch of the government should disburse the funds so raised, for Congress directly represents the taxpayers. This prohibition is particularly a restriction upon the Executive Branch.

Preferred Ports.—No preference shall be given, by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another. (Art. I., Sec. 9, Cl. 6. See page 88.)

(2) The Prohibitions applicable to both the United States and States.

Bills of Attainder and Ex Post Facto Laws.—No bill of attainder or *ex post facto* law shall be passed. (Art. I., Sec. 9, Cl. 3.)

No State shall . . . pass any bill of attainder, *ex post facto* law, . . . (Art. I., Sec. 10, Cl. 1.)

A *bill of attainder* is a legislative act which imposes a

punishment without a judicial trial. If the punishment be less than death, the act is termed a *bill of pains and penalties.* Within the meaning of the Constitution, bills of attainder include bills of pains and penalties.

Formerly bills of attainder were extensively used to overawe the people and keep them in subjection. The struggles incident to the rise of English liberties were marked by many examples of their arbitrary use, particularly the "Great Act of Attainder" of 1688, which comprised a list of over two thousand persons. The chief severity of the punishment in such cases was that the condemned person was rendered incapable of inheriting property from an ancestor or of transmitting it to his children.

Bills of attainder are unjust in the highest degree, in that they deprive men of life, liberty or property without a trial, and often without proof of guilt or the opportunity of defense. In an early case a justice of the Supreme Court said:

> It [this prohibition] very probably arose from the knowledge that the Parliament of Great Britain claimed and exercised the power to pass such laws, . . . The ground for the exercise of such legislative power was this, that the safety of the kingdom depended on the death, or other punishment, of the offender. With few exceptions, the advocates of such laws were stimulated by ambition or personal resentment and malice. To prevent such and similar acts of violence and injustice, I believe the federal and state legislatures were prohibited from passing any bill of attainder.

An *ex post facto law* is a criminal law. It is defined by the Supreme Court of the United States as:

> Every law that makes an action done before the passage of the law, and which was innocent when done, criminal and punishes such action;

Every law that aggravates a crime, or makes it greater than it was when committed;

Every law that changes the punishment and inflicts a greater punishment than the law annexed to the crime when committed;

Every law that alters the legal rules of evidence and receives less or different testimony than the law required at the time of the commission of the offense, in order to convict the offender.

Such laws are manifestly unjust and oppressive. For with the possibility of their enactment no man is secure in his life, his liberty or his property. The most innocent act of to-day may by the law of to-morrow be declared a grave offense and be visited with extreme punishment. Chief Justice Marshall has said:

The legislature is prohibited from passing a law by which a man's estate or any part of it shall be seized for a crime which was not declared by some provision of law, to render him liable to that punishment.

Titles of Nobility.—No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign State. (Art. I., Sec. 9, Cl. 8.)

No State shall . . . grant any title of nobility. (Art. I., Sec. 10, Cl. 1.)

Nobility is an adjunct of royalty, and titles create class distinction, which is contrary to the provision of the Declaration of Independence, which declares that "all men are created free and equal," and is antagonistic to the institutions of a republic, which depends for its life upon the absolute equality of all the people.

In the same spirit is that part of the prohibition relative to officers of the government. The duty to the Government should be paramount to all others. Oftentimes

the prosperity, if not the very existence, of the nation depends upon the loyalty of its representatives and officers. To guarantee fidelity to this trust, the provision was made so as to prevent them from being bribed and their official acts influenced by foreign states. From time to time various nations and rulers have made presents to our presidents and other officials, but these have been surrendered to the Government, and are preserved in the National Museum at Washington.

(3) The Prohibitions upon the States.

Miscellaneous.—No State shall enter into any treaty, alliance, or confederation ; grant letters of marque and reprisal ; coin money ; emit bills of credit ; make anything but gold and silver coin a tender in payment of debts ; pass any . . . law impairing the obligation of contracts, . . . (Art. I., Sec. 10, Cl. 1.)

For the purpose of establishing uniformity in our foreign relations, the several States surrendered to the general government all their sovereign rights and powers in external affairs. If the States were permitted to make treaties and alliances, it would result in danger to the Union, since they might enter into agreements which would be antagonistic to the interests not only of other States, but of the nation at large. Or, if a State were allowed to issue letters of marque and reprisal, it might involve all others in war. The prohibition against State coinage rests on much the same principle, for to permit it would destroy the very uniformity in our currency which we have seen to be necessary to its usefulness.

Bills of Credit.—*Bills of credit* are paper issued by a government, in which it promises to pay at some future

time certain sums of money to the persons holding it. During the Revolutionary War they were issued in vast quantity and circulated as money among the people. Not being paid when due, they rapidly depreciated in value, till they became practically worthless. As a result great financial losses followed, and public and private credit was destroyed. This prohibition was inserted to avoid a recurrence of such evils. Bills of credit must not be confounded with *state bonds*, which are contracts on the part of the State to pay for services rendered to it or for money borrowed for present use. "They are," says Chief Justice Marshall, "paper intended to circulate through the community, for its ordinary purposes, as money." The provision relating to tender in payment of debts was for the purpose of further avoiding the dangers of a debased currency.

Contract Obligations.—The provision restraining a State from passing any law impairing the obligations of contracts is of inestimable value, for it enters into every relation of life. The home, business, society are all affected by contract relations, for a *contract* is an agreement between two or more persons for a consideration to do or not to do some particular thing. It is therefore necessary to the security of human relations that an agreement once made should be undisturbed. Otherwise there would be no safety in trade or the affairs of life. Prior to the Constitution it was no uncommon occurrence for laws to be enacted without regard to their effect upon existing contracts. The insecurity thus occasioned was the cause of this provision, which extends not only to contracts between individuals, but also to those between the individ-

ual and the state. The extent of the prohibition was early decided by the Supreme Court in the celebrated Dartmouth College Case, which arose over an attempt by the legislature to alter the charter of the college. In a later case the same court said:

> It has been decided that a contract entered into between a state and an individual is as fully protected by the tenth section of the first article of the Constitution as a contract between individuals.

Commercial Regulations.—No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress. (Art. I., Sec. 10, Cl. 2.)

No State shall, without the consent of Congress, lay any duty of tonnage,* keep troops, or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay. (Art. I., Sec. 10, Cl. 3.)

The exercise of any of the powers prohibited by these clauses would so evidently conflict with those granted to Congress, or would be so liable to cause unjust discriminations by the States, resulting in endless confusion, if not serious complications, that no discussion seems necessary. A recital of the subjects is sufficient to show that they should be prohibited to states which are members of a union.

* Tonnage duty is a charge upon ships based upon their capacity.

PROHIBITIONS.

Upon Federal Government.

- To prohibit the *Slave Trade* before 1808.
- To suspend the writ of *Habeas Corpus* except in case of { Rebellion. / Invasion.
- To lay *Direct Taxes* except in proportion to census.
- To levy export duties.
- To *Draw Money* from treasury except as appropriated by law.
- To make *Preferred Ports.*

Upon Federal and State Governments.

- To pass { *Bills of Attainder.* / *Ex Post Facto Laws.*
- To grant *Titles of Nobility.*

Upon State Governments.

Without exception

- To enter into { Treaty. / Alliance. / Confederation.
- To grant letters of marque and reprisal.
- To coin money.
- To emit bills of credit.
- To make anything legal tender except gold and silver coin.
- To pass laws impairing contract obligations.

Except by consent of Congress

- To lay imposts and duties on { Imports. / Exports.
- To lay duty on tonnage.
- To keep in time of peace { Troops. / Ships of war.
- To enter into an agreement with { Another State. / Foreign nation.
- To engage in war unless { actually invaded. / in imminent danger.

6. PECULIAR POWERS OF SENATE AND HOUSE.

The Powers and Prohibitions which we have considered apply to *both* houses of Congress. There are, how-

ever, some rights and powers peculiar to each, such as the control of its own organization and members (Art. I., Sec. 5, Cl. 1 and 2), and certain others relating to the conduct of the government.

House of Representatives.

Financial Bills.—The most important right possessed by the House alone is that:

> All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills. (Art. I., Sec. 7, Cl. 1.)

The spirit of this provision came from the English constitution. The growth of political power in the Commons had resulted from questions relating to taxation. The people, who paid, demanded the right to levy taxes. In 1407 the sole authority to originate money bills became fixed in the House of Commons. A question having arisen between the two houses, Henry IV. ordained that the Commons should "grant," and the Lords "concur in," appropriations of money, which should be reported to the king "by the mouth of the Speaker of the Commons." Attempts were made by the Lords to encroach upon this power, which the Commons successfully resisted, even asserting that the Lords could not amend, but had only the right to consent to or reject the legislation. This limitation was in force in England at the time of the Constitutional Convention. Doubtless the success of the practice influenced the Convention in placing a similar provision in the Constitution, but the reasons for it are less apparent than in the English system. The

two houses of Congress do not represent different classes. Still, the constant renewal of the House by popular elections gives the people a nearer approach to legislation through that body than through the Senate, and they are able in a measure to control the demands made upon their resources. Legislative custom has further extended this exclusive right to the initiation of bills for general expenditures.

Impeachment.—"The House of Representatives . . . shall have the sole power of impeachment" (Art. I., Sec. 2, Cl. 5). This, with the power of the Senate to try all cases of impeachment (Art. I., Sec. 3, Cl. 6), will be considered under the Judicial Branch of the government. (See page 156.)

SENATE.

Executive Powers.—The peculiar powers of the Senate, which consist in the exercise of certain executive functions, as confirmations of treaties and appointments, will be treated in connection with the Executive Branch. (See pages 129 and 131.)

7. THE PRESIDENT AND LEGISLATION.

Relation to Congress.—Before concluding the consideration of the Legislative Branch of the government, it remains to note the relation of the President to the law-making power. He is not a member of either house. Only in the case of a disagreement between them as to the time to which to adjourn can he interfere with their conduct (Art. II., Sec. 3). His character as a legislator resembles that of a third house. It has been said:

The President represents the people at large—the Nation; the Senate, the people in separate commonwealths—the States; the House of Representatives, the same people in small communities—Congressional Districts.

Veto Power.—Still, in his legislative capacity he cannot originate legislation. His power lies in his authority to check congressional action.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bills shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill. (Art. I., Sec. 7, Cl. 2 and 3.)

This power of the President is called the "veto power," and his neglect to sign a bill remaining in his hands after

the adjournment of Congress is called a "pocket veto." The veto power is somewhat monarchical in its character, and was derived from England, though an early and democratic form was exercised by the Roman tribunes. It is worthy of note that no English ruler has employed the veto since 1707, while it has been constantly exercised by the President, and has, in this country, prevented much harmful legislation. It is, however, not an absolute power, for it may be overridden by a sufficient majority in Congress, in which case the bill is said to be passed "over the President's veto"; but so great is the influence of the Executive that such action is rarely attempted and seldom successful.

CHAPTER III.

THE EXECUTIVE BRANCH.

I. THE PRESIDENT AND VICE-PRESIDENT.

Separate Executive.—The Convention of 1787 adopted at the very outset the principle that the executive branch of the government should be separate and distinct from the legislative and judicial branches.

Executive under the Confederation.—A large part of the weakness of the Confederacy had been attributed to the cumbersome method of vesting all governmental powers in one representative body. But this was only a partial cause, for the executive powers granted by the Articles were so limited that they would not have been efficient even if exercised by a distinct department. The separation of the legislative and executive branches is not absolutely essential to a strong and stable government. The laws of Great Britain are to-day administered by a ministry which is, in fact, a committee chosen from the party having a majority in the House of Commons.

Reason for a Separate Executive.—In 1787 English writers and statesmen *believed* that the government of England possessed distinct branches, while in her American colonies such distinction had been *actual*. The delegates, therefore, familiar with this principle and believing

that the unity of powers under the Confederation had been a failure, deemed this separation necessary, and adopted it as the basis upon which to erect the new government.

Difficulty of Organizing Branch.—There was no subject more carefully discussed or in regard to which there was more diversity of opinion than the organization of the executive department. There was ample material in the governmental experience of the Confederacy for the construction of the legislative branch, but the executive powers to be granted presented a subject which caused much speculation, debate and the gravest anxiety.

Number of Executive.—The first step was to decide the number of persons who should constitute the executive. Arguments were advanced in favor of three persons with equal powers, and also in favor of a single executive. To the former proposition it was objected that any division of responsibility would induce corruption, that disagreements would delay and weaken executive action and that it was needless for this branch of government to be deliberative in character, as its sole duty was to enforce the laws. These objections, and the experience of most of the delegates in their state governments, prevailed, and it was decided that "the executive power shall be vested in a President of the United States of America" (Art. II., Sec. 1, Cl. 1).

Election of President.—The manner of his selection was then considered. Upon this there prevailed the widest difference of opinion, and it was not finally decided until the last two weeks of the sessions. The "Virginia Plan" provided that the executive should be appointed by the

national legislature. Three other modes were proposed —(1) by electors chosen by the people; (2) by the state executives; and (3) by the people directly. The first of these propositions was, after much discussion, adopted, and it was provided that:

Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President. (Art. II., Sec. 1, Cl. 2 and 3.)

In 1804 the third clause was amended as follows:

The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted. The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the vote shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.

The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States. (Amendment XII.)

Electoral College.—The electors thus chosen in the several States form the "Electoral College." It was the belief of the framers of the Constitution that the electors in each State would form a deliberative body which would discuss the merits of different statesmen and cast their votes for the one best fitted for the presidency; but with the first election in which party lines were strictly drawn (1796), the electors cast their ballots for the persons who were the recognized candidates of political parties; and since that time, with but a few unimportant exceptions, the electors have voted for their party's candidate. It is the usual custom that a State's electors are voted for on a general ticket by all the qualified voters of the State. Each State, however, may prescribe its method of selecting electors. In the election of 1892 in Michigan, two electors were chosen on a general ticket by the State at large, and one by the people of each congressional district.

Time of Election and Meeting.—The Constitution provides that:

> The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States. (Art. II., Sec. 1, Cl. 4.)

The election of electors occurs on the first Tuesday next after the first Monday in November of each year divisible by four. The meetings of the electors in their respective States take place at the state capitals on the second Monday in January following their election. After the votes have been cast, the electors prepare triplicate certificates of the result, signed by all of them; one

of these is mailed, and another sent by spècial messenger, to the President of the Senate ; the third is deposited with the District Judge of the federal district where the meeting is held.

Counting the Ballots.—The counting of the electoral votes, which occurs on the second Wednesday in February, has been done under joint resolution of the two houses of Congress, but the Constitution does not provide how it shall be done or who shall determine between the certificates received from two contesting sets of electors in the same State ; this was fixed by statute in 1887.

President's Term of Office.—In determining the President's term of office the Convention was influenced chiefly by the method of his selection. The original proposition was for a term of seven years, as it was deemed that a long term would make him more independent of the legislative branch ; but when the choice of the executive was given to a representative body entirely distinct from the national legislature, the reason for a long term disappeared, and it was provided that "he shall hold his office during the term of four years," . . . (Art. III., Sec. 1, Cl. 1). Through custom, however, it has become a settled rule that no person shall fill the office of President for more than two successive terms, a rule established by the action of Presidents Washington and Jefferson, who both declined to become candidates for reëlection after serving for two terms.

Time of Inauguration.—By a resolve of the Congress of the Confederacy, the President chosen under the Constitution was to be inaugurated on the first Wednesday in March, 1789. This happened to be the fourth day of the

month, so that the terms of succeeding Presidents have all commenced on that date, except when it is Sunday, and then on the succeeding day.

Ceremony of Inauguration.—The ceremony of inauguration takes place at Washington. An hour or so before noon the President-elect is conducted by the committee having the matter in charge to the Executive Mansion, where he joins the outgoing President, and seated at his left they are driven to the Capitol. In the presence of the assembled people the oath provided for in the Constitution (Art. II., Sec. 1, Cl. 8) is administered upon an open bible by the Chief Justice of the United States. The President then delivers an address, after which, accompanied by the former President seated at his left, he returns to the Executive Mansion and reviews the military and civic organizations which form the inaugural procession.

Qualifications.—The provisions of the Constitution relating to the qualifications for President are that:

> No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States. (Art. II., Sec. 1, Cl. 5.)

The provision relative to a person who was a citizen of the United States at the time of the adoption of the Constitution was only applicable for a short period after 1787. The further provision that he must have resided fourteen years within the United States should probably be read in connection with the last, but may apply to the

whole clause. The question has never yet arisen. The qualification that the President should be a landowner was discussed by the Convention, but was rejected as limiting the choice of the electors to a class, and thus being contrary to republican institutions.

Compensation.—A subject constantly before the Convention, when considering the mode of electing the President, was the evil of making the latter in any way dependent upon the legislative branch. In order, therefore, to make the President independent of Congress for his support, the Constitution provides that:

> The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he may have been elected, and he shall not receive within that period any other emolument from the United States, or any of them. (Art. II., Sec. 1., Cl. 7.)

The Government, however, pays the larger part of the President's official expenses. The act of 1793 fixed the annual salary of the President at $25,000, which was increased in 1873 to $50,000.

The Vice-President.—Since the President was to be elected for a fixed term, it was provided that:

> In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President [chosen for the same term (Art. II., Sec. 1., Cl. 1)], and the Congress may by law provide for the case of removal, death, resignation or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected. (Art. II., Sec. 1, Cl. 6.)

Election of Vice-President.—The provision for the election of the Vice-President (which is made in Article II., Section 1, Clause 3, and changed by Amendment XII.) differed from the provision for the election of the President in the original clause in not requiring a majority of the electoral votes, but only that the person having the next highest number to the President should be Vice-President. On the adoption of Amendment XII., which provided that the electors should designate their choice for President and Vice-President separately, the requirement of a majority was applied to both offices. Another difference is that in case there is no choice of a President by the electors or the "House," "the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President."

Succession to the Presidency.—By force of an act of Congress, which came into effect January 19, 1886, in case of the death, resignation or inability of both the President and Vice-President, the Secretary of State (if he is qualified to be elected President), and after him the Secretary of the Treasury, Secretary of War, Attorney-General, Postmaster-General, Secretary of the Navy and Secretary of the Interior, in this order, will hold the office of President until the disability ceases or another President is chosen. Before 1886 the President *pro tempore* of the Senate and the Speaker of the "House" would, in turn, have succeeded to the Presidency in such an emergency. The death of Vice-President Hendricks in November, 1885, called attention to the fact that, in case of the death of the President, a political opponent might, under the former act, succeed him. To avoid

such a possibility the act establishing the succession was changed.

2. EXECUTIVE POWERS.

Military Power.—The Constitution provides that:

> The President shall be Commander in Chief of the Army and Navy of the United States, and of the militia of the several States, when called into the actual service of the United States; . . . (Art. II., Sec. 2, Cl. 1.)

Although no President has ever taken the field in this capacity, he is responsible for the conduct of military operations and possesses the implied war powers of opening hostilities and instituting a blockade. (See page 197.)

Classification of Civil Powers.—The civil powers of the President may be divided into five classes: 1. The Veto Power. 2. The Appointing Power. 3. The Pardoning Power. 4. The Power to conduct the relations with foreign countries. 5. The Power to administer the internal affairs of the nation.

1. **Veto Power.**—The Veto Power has been discussed in considering the legislative branch. (See page 118.)

2. **Appointing Power.**—The Appointing Power is that by which the President

> shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments. (Art. II., Sec. 2, Cl. 2.)

Civil Service Act.—Appointments of this latter class have been limited by an act of Congress, known as the "Civil Service Act," which establishes a Commission which classifies appointive positions and examines applicants for appointment to the Civil Service, under which term is included "the executive branch of the public service as distinguished from the military, naval, legislative and judicial." The names of those who pass the examination, which is educational in character, are placed upon a list in the proper class, and an appointment to any classified office must be made from the list of that class. In the "Classified Civil Service," however, are included no officers whose appointments are subject to the approval of the Senate, or who, holding positions of responsibility, could affect the policy of the Government.

Spoils System.—The limitation of the appointing power by the Civil Service Act was the outcome of a popular movement against what is known as the "Spoils System." Since the time of President Jackson it had been customary to create vacancies in the civil service by removal for the sole purpose of filling them with members of the political party in control, on the principle that "to the victors belong the spoils." Activity in the party rather than personal fitness thus regulated appointments. The chief evil of this system was not so much the weakening of the government service through the periodical appointment of inexperienced and inefficient officials as it was its corrupting influence on political parties. "Spoils" became the object of success in elections, and large sums were contributed by those in office to their party organizations to retain their positions, while the chief aim of their political opponents was to obtain the offices. Party principles and great national questions were lost sight of in this scramble for office, until public opinion became so strong against the evil that an organized movement for "Civil Service Reform" was commenced, resulting in the present laws. Its beneficial effects have already been felt

in the improvement in the government service and in lessening the corruption in the political parties.

Executive Sessions.—Nominations by the President of officers for whose appointment the Constitution requires senatorial consent are sent to the Senate by special messenger. The consideration of such nominations, and also of treaties, is held by the Senate behind closed doors, the public being excluded. Sessions of this character are termed "executive sessions," because the Senate is exercising an executive and not a legislative function. From the fact that they are held *secretly*, the term "executive" is now generally applied to any secret session of the legislative body, without reference to the power which is being exercised.

Appointments during Recess of Senate.—The Constitution also provides that:

> The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session. (Art. II., Sec. 2, Cl. 3.)

This clause applies only to such appointments as require senatorial consent. It is further provided that the President "shall commission all the officers of the United States" (Art. II., Sec. 3).

Removals.—There is connected with the appointing power the implied power to remove by dismissal a civil officer who fails to perform his duties or acts against the policy of the Government. Military and naval officers, however, are removed by court-martial; and members of the judiciary only by impeachment.

3. **Pardoning Power.**—The Constitution provides that the President

> shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment. (Art. II., Sec 2., Cl. 1.)

The pardoning power includes the right of pardon, amnesty, reprieve and commutation of sentence.

> A PARDON is an act of the executive by which a person convicted of a crime is exempted from the punishment imposed by law. A general pardon, which applies to a number of persons guilty of the same offense, is termed an *amnesty*. A *reprieve* is the temporary suspension of the execution of a judicial sentence. A *commutation* of a sentence is lessening the severity of the punishment which the law imposes.

Necessity of Power.—This power is necessary to rectify errors of justice, but is not applicable to impeachment, because the Court of Impeachment is the highest instrument of the sovereignty, before which even the President and Justices of the Supreme Court can be summoned and tried.

4. **The Power to Conduct the Relations with Foreign Nations; Treaties.**—This power authorizes the President, "by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur" (Art. II., Sec. 2, Cl. 2). As the local interests of a State may be involved in a treaty, the Senate, which represents the States, is given a voice in its adoption. Thus the President in ratifying a treaty represents the people in general, and the Senate the States. A *treaty*, or a "convention," as it is sometimes called, is a compact between two or more sovereign states for their general welfare.

TREATY-MAKING.—The usual method of entering into a treaty with a foreign government is as follows: The negotiators, who may be either the Secretary of State and the diplomatic representative of the other government, our minister to the other country and its minister of foreign affairs, or commissioners especially appointed for the purpose, meet and exhibit their credentials, which must be plenary. The usual commission of an ambassador or minister is not sufficient; he must have a special commission giving him power to negotiate this particular treaty.

DRAFTING AND RATIFYING.—The negotiators submit drafts of the proposed treaty and suggest changes until an agreement is reached. It is then prepared in duplicate and the treaty is "celebrated"; that is, signed by the negotiators. In each of these duplicates, or "counterparts," the text of the treaty appears in English and in the language of the nation with which it is made. The treaty is then delivered to the President, who, if he approves, sends it to the Senate for ratification. When approved by two thirds of the Senators present it is returned to the President, who signs it and causes the Great Seal of the United States to be affixed.

EXCHANGE OF RATIFICATIONS.—The Secretary of State, or a commissioner with a special commission for this purpose, meets a commissioner of the other government, which has meanwhile ratified the treaty, and "ratifications are exchanged"; that is, the treaty signed by the President is delivered to the foreign commissioner and the treaty signed by the sovereign or president of the other country is given to the American representative.

TREATY PROCLAIMED.—As soon as the exchange of ratifications takes place, a proclamation, containing the text of the treaty, is issued by the Secretary of State in the name of the President, and it becomes a law of the United States.

Peace and Armistice.—As peace is made by treaty, the President can, with the consent of the Senate, make peace, and, without such consent, enter into an armistice for the cessation of hostilities, looking toward peace.

5. The Power to Administer the Internal Affairs of the Nation.—This power is implied by the clause, "He shall

take care that the laws be faithfully executed" (Art. II., Sec. 3).

Power to Convene Congress.—In connection with the two powers last discussed, the President "may, on extraordinary occasions, convene both houses, or either of them" (*Id.*). Such occasions may be the consideration of a treaty, the probability of war, the necessity of preserving the credit of the country or providing funds to conduct the government.

3. THE EXECUTIVE DEPARTMENTS.

Created by Congress.—The Executive Departments, through which the President conducts the affairs of the nation, are recognized, although not directly established by the Constitution. They have been created and their duties defined by acts of Congress.

The Cabinet.—The Heads of Departments, as they are termed in the Constitution, form the "official family" of the President, and as such are called the *Cabinet*. They are appointed by the President, with the consent of the Senate, and can be removed by him at his discretion.

1. The Cabinet.

Origin.—The Cabinet is not recognized by the Constitution. Although the advisability of such a council was discussed in the Constitutional Convention, it was not established because of a fear that it would lessen the responsibility of the chief magistrate to the people. But it was provided that the President

may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, . . . (Art. II., Sec. 2.)

Early in our history there was introduced the custom, which still continues, of having these officers meet with the President to consult upon important matters, so that the Cabinet has become a recognized part of our system of national government.

Meetings.—The Cabinet usually meets twice a week, but may be convened at any time. At these meetings the policy of the Government is discussed, but the President is not bound by the opinions expressed, and so his responsibility to the people for any executive act is in no way lessened.

Cabinet in England and the United States.—The word "Cabinet" is an adoption from the English term applied to the body of public ministers who enforce the laws. In Great Britain it possesses the executive authority; its members sit in Parliament and are responsible to that body and to the sovereign for their acts. In the United States the Cabinet is merely an advisory body to the President, and neither the President nor any cabinet officer can, under the Constitution (Art. I., Sec. 6, Cl. 2), be a member of the Senate or House of Representatives.

2. The Departments.

When Created.—The Executive Departments of the government were originally four in number—the Department of State, the Treasury Department, the War Department and the Department of Justice. To these were added in 1798 the Navy Department, in 1829 the Post

Office Department, in 1849 the Department of the Interior, in 1889 the Department of Agriculture, and in 1903 the Department of Commerce and Labor.

Official Heads. — The heads of these nine Departments are respectively the Secretary of State, the Secretary of the Treasury, the Secretary of War, the Attorney-General of the United States, the Secretary of the Navy, the Postmaster-General, the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce and Labor. These officers, appointed by the President, form the Cabinet and constitute the President's official advisers.

(*a*) *Department of State.*

Duties.—This Department has charge of the correspondence with agents of the United States in foreign countries, of negotiations with the diplomatic agents of other governments and of the general conduct of foreign affairs.

Duties of Secretary of State.—The Secretary of State, besides directing the affairs of his Department, is the custodian of the great seal of the United States. He is charged with the promulgation of the laws ; with giving notice of proposed constitutional amendments and with their promulgation when adopted ; with notifying the state authorities of vacancies in the offices of President or Vice-President ; and with issuing proclamations and other presidential communications of a public character.

Passports.—The Secretary of State can grant passports to citizens of the United States who go abroad intending to return. A *passport* is a certificate that the person described in it is a citizen of the United States, and is used

for the purpose of identification and to obtain the protection and rights to which he is entitled.

Diplomatic and Consular Service.—The agents of the United States in foreign countries are of two classes: diplomatic and consular.

Diplomatic Service.—A *Diplomatic Agent* is an official accredited—that is, sent with credentials of his character and rank—to a foreign sovereign or government, whose duty is to conduct the official intercourse between the United States and that sovereign or government, which is done through the Minister of Foreign Affairs of the other country. The conduct of such intercourse is termed *diplomacy.* There are four grades in the Diplomatic Service, which rank in the order given: (1) Ambassadors; (2) Ministers Plenipotentiary; (3) Ministers Resident; and (4) Chargés d'Affaires.

An *Ambassador* is supposed to be the representative of the person of the sovereign, and as such entitled to special privileges, among which was claimed the right to deal directly with the sovereign to whom he is accredited. This important privilege is, however, denied by later authorities, and ambassadors differ from other diplomatic representatives only in rank, which affects their social rather than their official standing.

A *Minister Plenipotentiary*, or, to give him his full title, "Envoy Extraordinary and Minister Plenipotentiary," represents the affairs, not the person, of the sovereign.* The word "plenipotentiary" never possesses its full meaning in this connection.

* There being no one individual in the United States who possesses the sovereignty, representation of the sovereign's person is in a measure fic-

A *Minister Resident* differs from a Minister Plenipotentiary only in grade.

A *Chargé d'Affaires* represents the Secretary of State, and is accredited to the minister of foreign affairs of the government to which he is sent. A *Chargé d'Affaires ad interim* is an official who, during the absence of an ambassador or minister, performs his duties. He is usually the first secretary of the embassy or legation.

Diplomatic Commissioners.—Besides these diplomatic agents, a commissioner, with the rank of one of the first two grades, is sometimes appointed for a special purpose, such as the negotiation of a treaty or the settlement of claims.

Diplomatic Privileges.—Diplomatic agents and their attachés possess certain exceptional privileges which are universally recognized. For example, they are exempt from criminal prosecutions and actions at law, and their persons and property are protected from seizure or injury.

Duties of Diplomatic Agents.—The principal duties of diplomatic agents are the negotiation of treaties, the settlement of claims and disputes between the two governments, the protection of citizens of the United States, the issuance of passports and the reporting to the Secretary of State the political events which occur in the country where they reside.

Persona non Grata.—In case a diplomatic representative is *persona non grata*—that is, one personally objectionable to the

titious and difficult of application. The distinction between ambassadors and ministers is based upon monarchical institutions, but was adopted by the United States in 1893 for the purpose of gaining for our diplomatic representatives of the first grade the consideration which only ambassadors enjoy in foreign courts.

government to which he is accredited—the minister of foreign affairs notifies the Secretary of State through the regular diplomatic channels, the minister is recalled and another is appointed who is *persona grata*. In the notice to the Secretary of State it is customary to give the grounds of objection, but it is not necessary, as the mere fact that he is objectionable to the foreign government is sufficient.

Severance of Diplomatic Relations.—When the relations between the United States and another country become strained, and war is imminent, the representative of the other nation at Washington demands or is given his passports, or safe conduct, and he is expected to leave this country at once. The United States representative to the other government is also given or demands his passports, and leaves the country. Thus diplomatic relations are broken off. Whatever official intercourse occurs between the two governments after their diplomatic agents have been withdrawn is carried on through the ministers of other countries.

Consular Service.—The Consular Service is divided into four grades: (1) Consuls-General; (2) Consuls; (3) Commercial Agents; and (4) Consular Agents.

A member of the Consular Service is an agent of the United States in a foreign country, to protect its citizens and commercial interests. Before he can begin his services his commission is forwarded to the diplomatic representative of the United States, who applies to the minister of foreign affairs of the country to which the officer is commissioned for permission for him to perform his consular duties. This permission is called an *exequatur*, and whenever it is revoked the consular officer must cease to act.

A *Consul-General* is sent to a country with which the United States has large commercial interests. He has supervision of the entire consular service in such country; and in certain countries (such as Great Britain, France, Germany, Italy, etc.) all consular officers send their reports to the Department of State through their Consuls-General.

A *Consul* has charge of the commercial relations between the United States and a certain district, in which he is authorized to perform his duties.

Consuls-General and Consuls are appointed by the President, with the advice and consent of the Senate.

A *Commercial Agent* differs from a Consul chiefly in rank. He is appointed by the President alone. Such an officer is usually not recognized by the country to which he is sent; but it is customary for the United States to request an *exequatur* to be issued to its Commercial Agents.

A *Consular Agent* is an official appointed by the President to act in part of a district in which the Consul is unable to perform his duties alone. A Consular Agent is under the supervision of, and reports to, the Consul of the district. Besides these regular grades there are vice-consular officers (such as Vice-Consuls-General, Vice-Consuls, etc.), who perform the duties of their superiors during the temporary absence of the latter.

Duties of Consular Officers.—The chief duties of Consuls are to report to the Secretary of State the conditions of trade between the United States and their districts and to make suggestions in relation to their improvement; to authenticate papers; to settle disputes between American

sea captains and their crews ; to give aid to shipwrecked or indigent citizens of the United States ; and in the absence of a diplomatic agent (as in colonies such as Canada or Australia) to issue passports.

No Official Privileges.—Consuls possess none of the immunities enjoyed by diplomatic officers. They are subject to the laws of the country where they reside, both criminal and civil. There is generally an exception to this rule in half-civilized and non-Christian countries, where by treaty they are given diplomatic privileges.

(*b*) *Treasury Department.*

Duties.—This Department has the management and custody of the finances of the United States, and supervision of the National Banking System.

Collection of Revenues.—It collects the customs duties, and to prevent violations of the tariff laws has a number of vessels, known as "revenue cutters," whose chief duty is to patrol the coasts and seize smugglers. It also collects the internal revenues and enforces the revenue laws. To prevent their violation, to apprehend counterfeiters and to protect the government funds, it employs a corps of agents and detectives, known as the "Secret Service."

Coinage.—The Treasury Department has charge of the mints and coins the money of the United States. The Bureau of Engraving and Printing, where the different forms of bills in circulation are made, is under this Department.

Custody of Funds.—It also has the custody of any other

government funds, and disburses money as directed by the laws passed by Congress.

Other Branches. — The Life-saving Service and the supervision of the construction of national buildings are under the control of this Department. The clerical force of the Treasury, which is the largest of any Department, belongs in a great measure to the classified civil service.

Duties of Secretary of the Treasury.—The Secretary of the Treasury has the special duties of making regulations for the enforcement of the customs, internal revenue and immigration laws, of making an annual report to Congress with an estimate of receipts and expenditures for the following year, and of publishing every three months a statement of the receipts and expenditures for the past quarter.

National Banks.—A *bank* is an association for the deposit and loan of money, and to facilitate its transference by drafts and bills of exchange. A *national bank* is one incorporated under the federal laws. National banks are under the supervision of a bureau of the Treasury Department, at the head of which is the Comptroller of the Currency.

ORGANIZATION.—A national bank may be organized by not less than five persons with a minimum capital ranging from $25,000 to $200,000, which is determined by the number of inhabitants in the place where it is organized. After organization a bank cannot act until the Comptroller has issued to it a certificate, which must be renewed every twenty years.

DEPOSIT OF BONDS; BANK NOTES.—A bank, before issuing notes, must deposit with the Treasury United States bonds equal to one fourth of its capital unless that exceeds $150,000, in which

case the deposit of bonds must be $50,000. Upon this deposit the Treasury issues to the bank, at its request, National Bank Notes for circulation to any amount less than ninety per cent. of the bonds deposited. On its note-issue a bank pays an annual tax of one per cent.

Prohibitions.—A National Bank is prohibited from making loans upon real estate, from accepting its own stock as security, from loaning to one person an amount exceeding one tenth of its capital and from impairing its capital without replacing the amount within three months after receiving notice from the Comptroller.

Government Supervision.—Five reports a year must be made to the Comptroller at such times as he designates; and an examiner, appointed by him, visits a bank from time to time and reports the state of its affairs. By these means the Comptroller is kept constantly informed of the condition of each bank in the country. When a bank fails, its affairs are placed in the hands of a receiver, appointed by the Comptroller, who converts its assets into money and deposits them in the Treasury, out of which the Comptroller may from time to time declare dividends to the bank's creditors.

Liability of Stockholders.—In case the assets of a bank are not sufficient to pay its debts, each stockholder may be assessed by the Comptroller to an amount not exceeding the face value of the stock which he holds.

Advantage of System.—The great advantages of the National Bank System are the uniformity of banking throughout the country and the security to depositors by reason of government supervision and the Comptroller's management of the affairs of a bank which has failed.

Legal Tender.—Before leaving the financial branch of the government a brief statement should be made concerning "legal tender" in the United States. *Legal tender* is the money or currency which by law a person can require a creditor to accept in settlement of a debt. In the United States gold coins are legal tender to any

amount ; silver dollars and Treasury notes of the Act of 1890 are full legal tender unless limited by contract ; greenbacks (United States notes), except as interest on the national debt; national bank notes in payments to any national bank or for customs duties and debts of the Government except for interest on national bonds; silver coins of a lower denomination than a dollar are full legal tender to the amount of ten dollars ; and nickel and copper coins, to the amount of twenty-five cents.

Coins.—Any person can send to one of the mints any amount of gold bullion, and, upon the payment of the cost of minting, called "seigniorage," have it coined into money. This privilege, being unlimited, is called "free coinage." The Treasury purchases the silver, nickel and copper which are made into coins, but only such amounts can be bought and coined as Congress authorizes. There is no free coinage of these metals.

Circulating Notes.—A *Treasury Note*, issued under the Act of 1890, is one secured by silver dollars stored in the Treasury. A *Greenback*, or *United States Note*, is merely a promise to pay the amount to the bearer. A *National Bank Note* is a promise by the bank which issues it to pay the bearer the amount of it, and is secured, as has been said, by a deposit of government bonds. All varieties of circulating notes are engraved by the Treasury and are redeemed or canceled by that Department.

(*c*) *The War Department.*

Duties.—This Department has charge of the construction and maintenance of the military stations and of the organization and maintenance of the military forces of the United States. The Department has also the direction of the Military Academy at West Point, N. Y. Prior to the establishment of the Department of the

Interior, Indian Affairs were for a time conducted by the War Department.

(*d*) *The Department of Justice.*

Duties.—This Department has the general supervision of actions and proceedings brought by or against the United States in the federal courts, and also has the control of the District Attorneys and Marshals of the United States.

Duties of Attorney-General.—The Attorney-General is required to give a legal opinion upon any question submitted to him by the President or by the Heads of the Departments, and to argue suits in the Supreme Court and Court of Claims in which the United States is interested. He is required to examine and approve the title to land before it can be purchased by the United States ; and he also examines and makes recommendations concerning applications for pardons and reprieves before they are acted upon by the President.

(*e*) *The Navy Department.*

Duties.—This Department is charged with the construction, equipment and maintenance of the navy and naval stations, and with the organization and maintenance of the naval forces of the United States. The Naval Academy at Annapolis, Md., is under this Department.

(*f*) *The Post-Office Department.*

Duties.—This Department controls the foreign and domestic postal service of the United States. Its em-

ployees, excepting postmasters, are generally subject to the civil service laws.

Powers of Postmaster-General. — The Postmaster-General is empowered by law to institute and discontinue post-offices, and, with the consent of the President, and without the consent of the Senate, to negotiate postal treaties with foreign nations.

(*g*) *The Department of the Interior.*

Duties. — This Department has charge of the public lands, including mines, the care of Indian tribes in the United States, of education, and of the railroads in which the United States has an interest.

Patents; Pensions. — The issuing of patents belongs to this Department, as does the granting of pensions. A *pension* is a stated allowance granted to soldiers and sailors disabled by wounds incurred or disease contracted in the service of their country, and also, under certain conditions, to their widows and children.

(*h*) *The Department of Agriculture.*

Duties. — This Department is devoted to the securing, preservation and publication of information relative to all branches of agriculture, the collection and distribution of seeds among agriculturists, the inspection of cattle and meats exported, and the prevention of diseases among live stock.

Weather Bureau. — This Department has charge of the Weather Bureau, which issues daily weather maps and forecasts for the succeeding twenty-four hours. The work of the Weather Bureau is particularly valuable along the

coasts and on the Great Lakes in giving timely warning of approaching storms, and also in making a study of the climate of the United States.

(*i*) *The Department of Commerce and Labor.*

Duties. — It is the duty of this Department to promote trade, transportation and fisheries, and the laboring and manufacturing interests of the country. To this end, it has charge of lighthouses, the coast survey, immigration and foreign commerce. It also embraces the *Fish* and *Labor Commissions* and takes the national census every ten years.

Bureaus. — The *Bureau of Manufacturing* is charged with the development of manufacturing industries and markets for the same at home and abroad. The *Bureau of Corporations* is empowered to investigate the management of corporations doing business in two or more States and report the same to the President for the purpose of recommending legislation.

(*j*) *Commissions, Bureaus, Etc.*

Besides these Departments, there belong to the Executive Branch of the government the *Civil Service Commission*, already spoken of; the *Interstate Commerce Commission*, which has supervision of railroads which pass from one State into another; the *Government Printing Office*, which publishes the "Congressional Record," presidential messages, reports and all other official documents; the *Librarian of Congress*, who is in charge of the Library of Congress and of the issuance of Copyrights; and other bureaus in charge of the national museums and scientific collections.

4. DUTIES OF THE EXECUTIVE.

Implied Duties of President.—The duties of the President are chiefly those implied in the powers vested in him, and for the proper exercise of which he is responsible.

Annual and Other Messages.—There are certain of his duties, however, which are specified in the Constitution. It is provided that:

> He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; . . . (Art. II., Sec. 3.)

Custom has established that at the opening of each session of Congress the President shall send to the two houses an *Annual Message* containing a review of the foreign and domestic affairs of the United States during the preceding year, and outlining what he deems the best policy as to existing conditions. The President may also submit a special message to Congress at any time when a question of importance arises which demands legislative action, with or without expressing his opinion as to the course to be pursued.

Mode of Delivering Messages.—Presidents Washington and Adams delivered their annual communications orally, but President Jefferson inaugurated the custom, since followed, of sending them in writing, to be read before the two houses.*

* Presidents Washington and Adams, at the opening of each regular session of Congress, complied with the constitutional requirement by

Reception of Foreign Representatives.—The President is also directed by the Constitution to "receive ambassadors and other public ministers" (*Id.*). A diplomatic representative delivers his credentials to the Secretary of State, and, if they are satisfactory, he is officially presented by the latter officer to the President and becomes the recognized agent of his government. In case two governments exist in the same country, it rests with the President to determine which of their agents represents the sovereignty.

Sole Responsibility of President.—The President "shall take care that the laws be faithfully executed" (*Id.*). This provision emphasizes his sole responsibility for the proper administration of national affairs, and prevents any question being raised as to the division of such responsibility.

personally delivering an "Annual Address," or "Speech," to the two houses of Congress, which met jointly for that purpose; and to this address each house replied through its presiding officer. All other communications of the Executive were by "Special Message," a copy of which was sent by messenger to each house. President Jefferson, at the opening of the first session after his inauguration, sent a memorandum to Congress stating that he deemed it advisable not to make the annual communication "by personal address," but to adopt the method "by message" which had been employed by his predecessors on all special occasions.

THE EXECUTIVE BRANCH.

THE PRESIDENT.

Powers.

Military.

- Command of
  - Army.
  - Navy.
  - Militia.
- Conduct of military operations.
- Begin hostilities.
- Institute a blockade.

Civil.

- Veto.
- Appoint
  - Ambassadors.
  - Public Ministers.
  - Consuls.
  - Judges.
  - Other officers of the United States.
  - Civil Service
    - Classified.
    - Unclassified.
- Pardon
  - Pardon.
  - Amnesty.
  - Reprieve.
  - Commutation of sentence.
- Conduct foreign relations } Convene Congress for these
- Administer internal affairs } purposes.

Duties.

- Give information, Recommend measures } to Congress by { Annual, Special } Message.
- Receive foreign representatives.
- Execute the laws.

THE EXECUTIVE DEPARTMENTS.

Department of State.

- *Secretary of State*
  - Custody of the Great Seal.
  - Promulgate laws.
  - Give notice of / Promulgate
    - Constitutional Amendments.
  - Issue
    - Proclamations.
    - Presidential Communications.
    - Passports.
- Correspondence with and direction of
  - Diplomatic service
    - Ambassadors.
    - Ministers Plenipotentiary.
    - Ministers Resident.
    - Chargés d'Affaires.
  - Consular service
    - Consuls-General.
    - Consuls.
    - Commercial Agents.
    - Consular Agents.
- Negotiations with foreign diplomatic agents.

Treasury Department.

- *Secretary of the Treasury*
  - Make
    - Regulations
      - Customs.
      - Internal revenue.
      - Immigration.
    - Annual estimate.
  - Publish quarterly statement.
- Collection of
  - Customs duties.
  - Internal revenue.
- Coinage
  - Coins
    - Gold.
    - Silver.
    - Nickel.
    - Copper.
  - Circulating notes
    - Treasury notes.
    - U. S. notes (Greenbacks)
    - National bank notes.
- Supervision of national banks.
- Custody and Disbursement of
  - All government funds.
- Direction of
  - Life-saving service.
  - Construction of National Buildings, etc.

War Department.

- *Secretary of War:*
  - Construction and Maintenance } of military stations
  - Organization and Maintenance } of land forces.

Department of Justice.

- *The Attorney-General*
  - Advise { President. / Heads of departments.
  - Argue U. S. suits { Supreme Court. / Court of Claims.
  - Examine and Approve { Titles to lands purchased by the United States.
  - Examine and Recommend } as to pardons.
- Supervision of legal actions when United States a party.
- Control of { District Attorneys. / Marshals.

Navy Department.

- *Secretary of the Navy:*
  - Construction, Equipment and Maintenance } of { Navy. / Naval stations.
  - Organization and Maintenance } of naval forces.

Post-Office Department.

- *Postmaster-General*
  - { Institute and / Discontinue } Post-offices.
  - Negotiate postal treaties.
- Control of postal service. { Foreign. / Domestic.

Department of the Interior.

- *Secretary of the Interior:*
  - Care of
    - Public lands.
    - Indians.
    - Education.
    - Railroads.
  - Issuance of patents.
  - Granting of pensions.

Department of Agriculture.

- *Secretary of Agriculture:*
- Preservation and Publication — of agricultural information.
- Collection, Testing and Distribution — of seeds.
- Inspection of exported — Cattle. Meat.
- Prevention of diseases among live stock.

Weather Bureau.

Department of Commerce and Labor.

- *Secretary of Commerce and Labor:*
- Promote — Trade. Transportation. Fisheries. Labor and Manufacture.
- Charge of — Lighthouses. Coast survey. Foreign commerce.
- Enforcement of immigration laws.
- Taking and Publication — of national census.
- Bureau of manufacturing.
- Bureau of corporations.

Civil Service Commission.

Interstate Commerce Commission.

Commissioner of Labor.

Fish Commission.

Government Printing Office.

Librarian of Congress — Charge of Congressional Library. Issuance of copyrights.

Bureaus in charge of — National Museum. Scientific collections, etc.

CHAPTER IV.

THE JUDICIAL BRANCH.

I. THE FEDERAL JUDICIARY.

The Judicial Power.—The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. (Art. III., Sec. 1.)

The system of courts thus established is generally recognized as chiefly instrumental in giving stability and permanence to the national government.

Judiciary of the Confederacy.—Under the Articles of Confederation there was practically no national judiciary. The Congress was the arbiter in boundary disputes between States and was empowered to establish prize courts; but the interpretation and application of the laws of the Confederacy rested with the state courts, from whose decisions there was no appeal. As a result, these interpretations were affected by local prejudice or interest.

Necessity of a National Judiciary.—The need of a national judiciary for the application of the national laws in the same way to every citizen of every State, as well as for a check upon the acts of the state governments and the legislative branch of the federal government, was early recognized by the Convention of 1787. The

check upon the national legislature could not be exercised by the state courts, for there would be no uniformity in their decisions. But if there was no such check, it was evident that the constitutional limitations upon legislation would be ineffective, as Congress, in conjunction with the President, would, like the British Parliament, be practically supreme.

Independence of Judiciary.—It was evident also that the tribunal possessed of such powers should be independent of the other branches of the government, both for its maintenance and tenure of office, so that it might act with that freedom and fearlessness which were essential to the proper performance of its duties. Therefore the Constitution provides that :

> The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office. (Art. III., Sec. 1.)

Establishment of the Judiciary.—There was thus established a judiciary, national and independent, with power in Congress to provide for inferior courts, from which appeals could be taken to the higher tribunal. The provisions for the judiciary were determined upon in the early sessions of the Convention, and though the greater part of the Constitution underwent numerous modifications, these remained practically unchanged.

The Impeaching Power.—In one particular, however, the national tribunal was deprived of a judicial power originally given to it. That was to try impeachments, for it was apparent that if no check were placed upon the

judges they might become the supreme power in the government by annulling the laws of Congress and removing the executive officers by impeachment. To prevent such a possibility, the Convention lodged the impeaching power in the legislative branch and made the judicial officers themselves subject to removal from office upon impeachment.

The completed Constitution thus established three divisions of the judicial power: first, that given to the Senate, a Court of Impeachment ; second, the Supreme Court of the United States ; and third, such inferior courts as Congress might create.

1. The Court of Impeachment.

Definition.—*Impeachment*, under the Constitution, is a charge made in writing by the House of Representatives to the Senate against a civil officer of the United States. The charge or charges are termed *Articles of Impeachment.*

Constitutional Provisions.—The provisions in the Constitution relating to impeachment are as follows:

The House of Representatives . . . shall have the sole power of impeachment. (Art. I., Sec. 2, Cl. 5.) The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two thirds of the members present. (Art. I., Sec. 3, Cl. 6.)

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall, nevertheless, be liable and subject

to indictment, trial, judgment and punishment, according to law. (Art. I., Sec. 3, Cl. 7.)

The President, Vice President and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors. (Art. II., Sec. 4.)

The words "civil officers" in the last provision include all the judicial and executive officers of the government excepting those of the army and navy, but it has been held that members of the legislative branch are not of this class.

Origin.—Since the time of Edward III. the English House of Commons has exercised the right to summon any English subject before the House of Lords for trial. Upon this power there was no limitation as to person or punishment, and its abuses prior to the American Revolution induced the Constitutional Convention to limit the jurisdiction and judgment of the Court of Impeachment.

Procedure.—The method of impeachment in the United States is as follows: When a civil officer is charged with having committed an impeachable act, the House of Representatives appoints a committee to investigate the charges. If the report of the committee is against the accused and is sustained by a majority of the House, usually seven Representatives, called "Managers," are elected to impeach the officer before the bar of the Senate and to conduct the trial.

Trial.—The accused is then summoned to appear before the Senate, which resolves itself into a Court of Impeachment. If the officer does not appear, the Senate takes the proof without him; but if he appears and denies the

accusation, a time is fixed for the trial, when it proceeds in much the same way as in an ordinary criminal trial in the federal courts. When deciding a question raised during the trial or when considering the verdict, the Senate does so in secret session, after which its decisions are publicly announced.

Conviction.—No officer can be convicted in case of impeachment unless two-thirds of the Senators present concur, but it would seem that questions raised during the trial can be determined by the majority. In the trial of a person for treason the Constitution provides that:

> No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court. (Art. III., Sec. 3, Cl. 1.)

Trial of President.—In case the President is impeached, it is manifest that the Vice-President is interested in the trial, for, if the accused is convicted and deprived of his office, the Vice-President would succeed him. In view of this fact, the provision was inserted in the Constitution that in such case the Chief Justice shall preside at the trial.

Grounds for Impeachment.—The grounds for impeachment are stated in the Constitution to be "treason, bribery, or other high crimes and misdemeanors." *Treason* against the United States is defined by the Constitution to "consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort" (Art. III., Sec. 3, Cl. 1). *Bribery* is the giving, tendering or receiving of any gift as a reward for performing a legal duty. *High crimes and misdemeanors* cover all

classes of crimes, but whether a crime committed by an officer not in his official capacity is an impeachable offense is a question as yet undecided.

2. The Supreme Court.

Composition.—This tribunal is composed of judges appointed by the President with the consent of the Senate. There is no provision as to number, although from Article II., Section 2, Clause 2, it would appear that the framers of the Constitution contemplated more than one judge, and a *Chief* Justice is mentioned in Article I., Section 3, Clause 6 ; nor is it provided where or when the court shall hold its sessions. These details have been supplied by laws enacted by Congress. By the Judicial Act of 1789 the number of Justices was made six, which has since been increased to nine.

Sessions.—The Court sits at Washington, and holds one session annually, commencing on the second Monday in October.

3. Inferior Courts.

Divisions.—In accordance with the provisions of the Constitution (Art. III., Sec. 1), Inferior Courts have been established by acts of Congress. They will be considered in the following order: (*a*) District Courts ; (*b*) Circuit Courts ; (*c*) Circuit Courts of Appeal ; and (*d*) the Court of Claims. The judges are appointed in the same way and for the same term as the Justices of the Supreme Court, and their compensation is guaranteed by the same constitutional provision.

(*a*) *District Courts.*

Districts and Judges.—Congress has set apart each State as a judicial district, except in case of the more populous States, which are divided into two or more districts. At present (1902) there are seventy-three judicial districts. There is a resident Judge in each district ; and the court is held by a District Judge.

(*b*) *Circuit Courts.*

Circuits and Judges.—The United States is also divided into nine judicial circuits. To each Circuit the Supreme Court allots one of its Justices, who must attend at least one term of such Court in every two years. For each circuit there are also appointed two or more Circuit Judges. Prior to the establishment of the Circuit Courts of Appeal, there was but one Judge appointed for each Circuit.

Terms.—A Circuit Court sits twice a year in each district within the circuit. It may be held by the Justice of the Supreme Court, a Circuit Judge, or a District Judge sitting alone, or by the Justice and a Circuit Judge together, or by either of them sitting with the District Judge.

(*c*) *Circuit Courts of Appeal.*

Number and Purpose.—They are nine in number and were created for the purpose of relieving the Supreme Court of certain classes of appeals.

Composition.—A Circuit Court of Appeal consists of three Judges, two of whom form a quorum. It is held by the Justice of the Supreme Court allotted to that cir-

cuit and two Circuit Judges, but a District Judge is also competent to act. No judge, however, can hear a case in the Circuit Court of Appeal at the trial of which he presided in the District or Circuit Court.

(*d*) *The Court of Claims.*

Composition and Session.—This Court consists of five Judges, appointed in the same manner as other judicial officers, one of whom is Chief Justice of the Court. It sits in Washington and holds one session annually.

4. Court Officers.

United States Commissioners.—*United States Commissioners* are appointed in each circuit by the Circuit Courts, to assist the District and Circuit Judges. Their chief duties are to administer oaths, to examine and commit offenders against the federal laws, and to examine witnesses in certain cases.

District Attorneys.—A *District Attorney* is appointed by the President for each judicial district to conduct criminal cases and civil actions, to which the United States is a party, in the inferior courts except the Court of Claims.

Clerks.—A *Clerk* is appointed by the various courts, who has charge of the archives, the seal and the moneys paid into court.

Marshals.—A *Marshal* is appointed by the President in each district, who executes the commands of the court, makes arrests for the violation of the federal laws and is given power to appoint deputies to aid him in the performance of his duties.

2. THE JURISDICTION OF THE FEDERAL COURTS.

Jurisdiction is the authority to administer justice under the laws. It may be limited as to the matter in controversy, or the persons involved. It is also either *original* or *appellate.*

Original Jurisdiction is the authority of a court to try a cause which has not been submitted to any other court, to receive evidence of the facts, to apply the laws and to render judgment.

Appellate Jurisdiction is the authority of a court to review a cause, tried and determined in another court, without taking further evidence, and to reverse, modify or approve the judgment rendered.

Concurrent Jurisdiction is that which a court possesses in common with another court or courts.

The Common Law consists of those rules of justice, not enacted by the legislative power, which courts in England and the United States have declared to be the right principles for the regulation of society.

As the rules of the Common Law became definite and fixed, another branch of jurisprudence was introduced, termed *Equity,* which arose from the same source, natural justice, and was intended to supplement or correct the settled rules of the Common Law, when their application would work hardship or injustice.

The Common Law and Equity are termed the *Unwritten Law. Statute Law* comprises those laws which have been enacted by the legislative power. These are called the *Written Law,* and supersede the Common Law and Equity whenever their rules conflict.

This system of jurisprudence, introduced in America with the earliest English settlements, was the only one with which the Colonists were familiar at the time of the Revolution. It was, therefore, recognized as a proper basis for judicial proceedings, and is to-day the system employed in the federal courts and in all the States except Louisiana, which derives its jurisprudence from France, and except in relation to certain questions of land titles arising in the States and Territories included in the lands ceded to the United States by Mexico.

Admiralty Law is that which relates to maritime cases, both

civil and criminal, and in the United States pertains to the high seas, the great lakes and navigable rivers.

A CRIMINAL ACTION is a prosecution in a court of law begun by the Government against an individual, which has for its object the punishment of a crime.

A CIVIL ACTION is one begun by the Government or a person against another person, to collect debts, enforce contracts, determine rights or recover damages for injuries.

A PERSON, in a legal sense, includes a single indvidual, a partnership, association or corporation.

1. Constitutional Limitations.

As to Subject.—As to the *subject in controversy*, the jurisdiction of the federal courts is limited by the Constitution

to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; . . . [and] to all cases of admiralty and maritime jurisdiction; . . . (Art. III., Sec. 2, Cl. 1.)

As to Parties.—As to *parties*, the federal jurisdiction is limited by the Constitution

to all cases affecting ambassadors, other public ministers, and consuls; . . . to controversies to which the United States shall be a party; to controversies between two or more States; between a State and the citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign states, citizens or subjects. (*Id.*)

The above provisions were modified in 1798 by Amendment XI., which provides:

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prose-

cuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

As to Penalties.—In criminal cases the Constitution provides that excessive fines shall not be imposed nor cruel and unusual punishments be inflicted (Amendment VIII.; see page 185). In convictions for treason the punishment is limited by the provision that

no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted. (Art. III., Sec. 3, Cl. 2.)

Congress, under the power granted to it by this last section, has fixed the punishment as death, or, at the discretion of the court, imprisonment for not less than five years, a fine of not less than ten thousand dollars, and incapacity to hold any office under the United States.

2. Original and Appellate Jurisdiction of the Supreme Court.

Original.—The original jurisdiction of the Supreme Court is confined to two classes of cases, for the Constitution provides:

In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. (Art. III., Sec. 2, Cl. 2.)

Appellate.—The appellate jurisdiction of the Court is much more extensive, but is subject to congressional regulations, which pertain chiefly to limiting the classes of cases which can be appealed. The provision of the Constitution is :

In all the other cases before mentioned the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make. (*Id.*)

3. Jurisdiction of the Inferior Courts.

Power of Congress.—As these tribunals are created by Congress, it follows that their jurisdiction must be established by legislative acts, but it cannot exceed the constitutional limitations.

Congress can, therefore, change or modify the jurisdiction of the different courts at any time, and this has been done in certain instances.

(*a*) *Courts of Original Jurisdiction.*

The Courts.—The courts of original jurisdiction, only, are the District Courts, the Circuit Courts and the Court of Claims.

District and Circuit Courts.—The District and Circuit Courts have concurrent jurisdiction of some civil actions and certain criminal cases, but all of the latter in which the sentence of death may be imposed must be brought in a Circuit Court. Admiralty cases and, generally, bankruptcy matters, must come before the District Courts, while cases arising under the revenue, patent and copyright laws must be brought in the Circuit Courts.

Juries.—The trial of all crimes, except in cases of impeachment, shall be by jury ; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed. (Art. III., Sec. 2, Cl. 3.) (See Amendments VI. and VII., pages 185 and 187.)

Court of Claims.—The Court of Claims has sole and original jurisdiction of claims against the United States Government generally, and in all cases which involve less than three thousand dollars its decisions are final.

(*b*) *Courts of Appellate Jurisdiction.*

Circuit Courts of Appeal.—Except in certain cases, in which Congress has provided for appeals directly to the Supreme Court, a party dissatisfied with the decision of a District or Circuit Court may appeal to a Circuit Court of Appeal; and in some cases, such as those relating to the revenue, patent or copyright laws, or those involving less than five thousand dollars the decision of the Circuit Court of Appeal is final.

Supreme Court.—Except when the decision of a Circuit Court of Appeal is final, a party may appeal from its decision to the Supreme Court; and in cases involving such questions as the interpretation of the Constitution or a treaty, the conviction for a crime punishable with death or the jurisdiction of a court, a party can appeal *directly* to the Supreme Court without first having the case reviewed by a Circuit Court of Appeal. It has also been provided by Congress that when a case before the courts of a State involves questions relating to the federal Constitution, laws or treaties, a party can appeal from the highest state court to the Supreme Court.

JUDICIAL BRANCH.

COURT OF IMPEACHMENT
- House of Representatives, to impeach
- Senate, to try impeachments
- for: Treason, Bribery, Other High Crimes and Misdemeanors.

Constitutional Limitations — as to Parties, Subject and Penalties.

SUPREME COURT (A Chief Justice and Eight Associate Justices) — JURISDICTION

- **Original** — *In Cases*
  - Affecting: Ambassadors, Consuls; Other public ministers.
  - When a State is a party.
- **Appellate**
  - *Directly* from Circuit and District Courts — *In Cases involving*:
    - Jurisdiction of the Court.
    - Interpretation of Federal Constitution or a treaty.
    - Application of Federal Constitution to a: Federal law; State Constitution; State law.
    - Conviction of capital crime.
  - From Circuit Courts of Appeal and the Court of Claims: In all cases in which the decisions are not final.

INFERIOR COURTS — JURISDICTION

Of Original Jurisdiction

- **District Courts** (District Judge) — **Exclusive**
  - Admiralty and Maritime Cases.
  - Cases for Penalties and Forfeitures.
  - Bankruptcy Proceedings (generally), etc.
  - Crimes, not punished by death.
- **Circuit Courts** (Justice of Supreme Court, Circuit Judge and District Judge, or any two of them) — **Concurrent**
  - Civil Actions for or against U. S. or an officer.
  - Infringement of personal rights.
  - Bankruptcy (certain proceedings), etc.
- **Circuit Courts** (Justice of Supreme Court, Circuit Judge and District Judge, or any two of them) — **Exclusive**
  - Crimes, punished by death.
  - Cases under the Revenue, Patent and Copyright Laws.
  - Civil Actions, not for or against U. S. or an officer, etc.
- **Court of Claims** (A Chief Justice and Four Associate Justices) — **Claims**
  - Founded on a Law of Congress: Regulation of any Executive Department; Contract with the Government.
  - Referred by either House of Congress.
  - Of Disbursing Officers to be relieved from disability.

Of Appellate Jurisdiction

- **Circuit Courts of Appeal** (Justice of Supreme Court, two Circuit Judges and a District Judge, or any two of them)
  - Cases not appealable directly to the Supreme Court.
  - Judgments are final in all cases:
    - Involving U. S. or State citizenship.
    - Arising under: Patents; Revenue laws.
    - Crimes not punished by death.
    - Admiralty cases.
    - Civil suits less than $5,000.

SOURCE OF AUTHORITY IN THE FEDERAL GOVERNMENT.

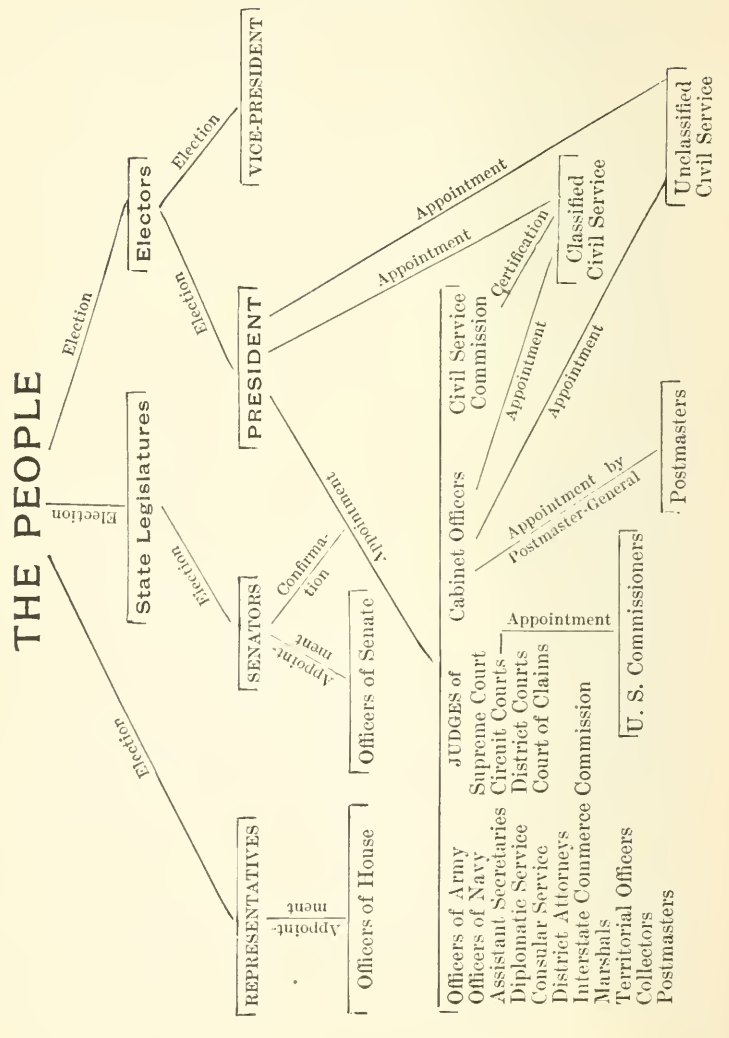

TABLE GIVING THE SOURCE OF AUTHORITY, TERMS OF OFFICE AND SALARIES OF SENATORS, REPRESENTATIVES AND PRINCIPAL EXECUTIVE AND JUDICIAL OFFICERS OF THE UNITED STATES.

	Source of Authority	Term of Office	Salary
LEGISLATIVE—			
Senators	Elected by State Legislatures	6 years	$5,000
Representatives	Elected by People	2 years	"
Territorial Delegates	" "	"	"
EXECUTIVE—			
(*Civil*)			
President	Elected by Electors	4 years	50,000
Vice-President	" "	"	8,000
Cabinet Officers	Appointed by President and confirmed by Senate	Will of the President	8,000
Solicitor-General	"	"	7,000
Assistant Secretaries	"	"	4,000–4,500
Ambassadors	"	"	17,500
Ministers Plenipotentiary	"	"	5,000–12,000
Ministers Resident	"	"	4,000–7,500
Consuls-General	"	"	2,000–5,000
Consuls	"	"	1,000–5,000 (and fees)*
Civil Service Commissioners	"	"	3,500
Interstate Commerce Commissioners	"	"	7,500
District Attorneys	"	"	Fees †
Marshals	"	"	" †
(*Army*)			
Lieutenant-General	"	Life	11,000
Major-Generals	"	"	7,500
Brigadier-Generals	"	"	5,500
Colonels	"	"	3,500–4,500
(*Navy*)			
Admirals	"	"	13,500
Rear-Admirals	"	"	5,500–7,500
Captains	"	"	3,500
JUDICIAL—			
Chief Justice of the United States	"	"	13,000
Justices of Supreme Court	"	"	12,500
Circuit Judges	"	"	7,000
District Judges	"	"	6,000
Judges of Court of Claims	"	"	6,000–6,500

* To some consulates are attached the fees which form a part or all of the consul's compensation.

† Besides the fees allowed, these officers are usually paid $200 annually.

CHAPTER V.

THE STATES AND TERRITORIES.

National Protection.—The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence. (Art. IV., Sec. 4.)

Thus is established permanency to republican institutions, not only in the nation as a whole, but in the various States. All the provisions of this section are designed to suppress any effort within or without a State to overthrow its republican government and establish another form in its stead. Even if a State itself should desire a change in its system of government, it would be the duty of the nation to resist such change with all its power, even by force of arms.

Illustrations.—A delicate question as to the power of the national government in this capacity arose at the close of the Civil War in the case of the seceding States. There was one opinion that by the act of secession these States had lost all their sovereign rights and were a portion of the territory of the nation. Another opinion was that they still possessed these rights. As a result they were held under military control until it was assured that the state governments were still republican in form and strong enough to maintain themselves.

The national government is also the natural protector of the States in the case of foreign invasion or domestic troubles. In the latter instance its power has frequently been exercised, particularly in the case of the Dorr Rebellion (1842), and later during the great railroad strike of 1877, when the state authorities were unable to enforce the laws, preserve order or protect property.

Form of State Governments.—As a result of this provision there are, besides the national government, as many governments, independent so far as their local affairs are concerned, as there are States. Each of these is a republic with an executive, called a "Governor," who resembles the President in his powers and duties, a judicial branch, and a legislative branch consisting of two houses similar in organization to the Senate and House of Representatives, but with more varied powers than those of Congress.

"State Rights."—The relation of a State to the Union was for many years one of the most important questions which confronted our statesmen. One class maintained that the States could withdraw from the Union at any time they desired. The contrary opinion was that, having surrendered to the federal government certain sovereign rights, they could not reassume them at their own will. For years this discussion engaged the ablest minds of the country, and at times nearly led to open conflict. The act of the State of South Carolina in resisting the collection of duties during the administration of President Jackson was such an instance. At length this difference of opinion came to be marked sectionally, civil war followed, and the question of secession was settled

forever. The principle determined by the war is stated by Chief Justice Waite as follows:

All the rights of the States as independent nations were surrendered to the United States. The States are not nations, either as between themselves or towards foreign nations. They are sovereign within their spheres, but their sovereignty stops short of nationality.

State Comity.—For the sake of uniformity and the promotion of justice between the several States, it was provided that :

Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof. (Art. IV., Sec. 1.)

This provision does not extend the power of a State beyond its borders, but is intended to make valid in all parts of the Union the acts of a State in the exercise of its lawful powers. Thus, judgments of the courts of one State cannot be questioned in any other, and records of the title of property are conclusive in every State. If this were not so, and if questions once determined could be reopened to litigation in other States, the greatest confusion and injustice would result from the difficulty of presenting evidence to the courts.

Rights of Citizens.—The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States. (Art. IV., Sec. 2, Cl. 1.)

This has been already considered. (See page 98.) It was not, however, intended that a person under obliga-

tions to a State could free himself by removing to another State. For—

A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime. (Art. IV., Sec. 2, Cl. 2.)

This demand and surrender are called "Extradition," and Congress has provided rules for its exercise. Its value is seen in the means it affords of bringing criminals to justice. If there were not such a provision, and if it were possible for a man by fleeing from the State where the crime was committed to escape the penalties attached, crimes would increase and every State would become an asylum for rogues and criminals from other States.

Fugitive Slaves.—No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due. (Art. IV., Sec. 2, Cl. 3.)

When it was adopted, this was an important provision. It was demanded by the delegates of the "slave" States as a protection to their property. At that time Massachusetts had prohibited slavery within its borders, and it was disappearing in other Northern States. It was seen that without the existence of the relation of master and servant there would be no means of compelling the return of a runaway slave who had escaped to a "free" State. The enforcement of this provision during the slavery agitation met with great opposition in some places, and was often evaded; and its "injustice" was one of the most

powerful arguments used by the anti-slavery agitators. The Civil War and the abolition of slavery rendered the section practically obsolete, for although it included apprentices and others bound to service, it is now of little effect.

Federal Territory.—The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State. (Art. IV., Sec. 3, Cl. 2.)

At the time of the adoption of the Constitution the vast territory lying between the States and the Mississippi River had, with the exception of a portion belonging to Georgia and North Carolina, been ceded to the general government, and very properly power was given to Congress to make rules respecting this territory, with a proviso protecting the rights of Georgia and North Carolina. These States subsequently relinquished their claims to this land, and the proviso is now of no effect.

Acquisition of Territory.—From time to time since the adoption of the Constitution large tracts have been added to the national domain. In 1803 we acquired by purchase from France the territory then known as Louisiana. In 1819 Florida was ceded to us by Spain. Texas joined of its own will in 1845, and the Mexican War (1848) and Purchase (1853) added the Southwestern territory. Alaska was purchased in 1867 from Russia, while more recently the annexation of Hawaii (1898) and the cessions following the war with Spain (1898) have further increased our possessions. The Constitution is silent upon the power

to acquire new territory, but on the theory that as a sovereign power the nation possesses all the rights of sovereignty, among which is the right to acquire territory, the exercise of this power by the Government has been generally acquiesced in. This is particularly true when such acquisition has been made by purchase or the consent of the people of the territory annexed, and while there has been question as to the right to obtain lands by conquest, the prevailing opinion has been favorable to the existence of such right. This sentiment is stated very clearly by Pomeroy in his "Constitutional Law."

Congress may declare war, and the President, as Commander-in-chief, may wage war. One of the most common results of war is conquest, and unless the wars of this country are to be carried on differently from those of other nations, and unless we are to be deprived of the advantages of success, the possibility of conquest must be considered as included within the capacity to declare and wage war. The President, with the advice and consent of two thirds of the Senate, may make treaties. No kinds of treaties are specified, no limitations are placed; the language is as broad as possible; indeed, these international compacts are expressly declared to be the supreme law of the land. No species of treaty is more common than that of cession; and unless we would interpolate a restriction which the language of the Constitution does not require, and thereby place the United States in a condition of inferiority to all other countries, we must admit that territory may be acquired by treaty.

And the Supreme Court of the United States, through Chief Justice Marshall, has said:

The Constitution confers absolutely on the government the powers of making war and of making treaties. Consequently that government possesses the power of acquiring territory either by conquest or treaty.

Congressional Power over Territory.—Over territory so acquired Congress has, for a time, exercised exclusive control. In order to secure settlers and build up States, it has enacted general laws for the sale of lands and the making of grants and loans, and has established a system for the survey of vast tracts and the regulation of titles. But the disposition of public lands is only a small part of this power of Congress. It can enact local laws for the Territories, regulating the ordinary intercourse of individuals, the procedure of courts, the chartering of railroads, and, in a word, can perform all other legislative acts which can be done by the legislature of a State.

Territorial Government.—Congress has not, however, continued this local control. From time to time various sections have been organized into *Territories*, over which local governments have been established. The system varies in certain details, but in the main it is the same in all. The government is republican, and forms a fitting school for subsequent statehood.

Territorial Officers.—The executive officer is a Governor appointed by the President, with the consent of the Senate, for a term of four years. He must reside in the Territory and is Commander-in-chief of the territorial militia. He may grant pardons and reprieves and remit fines, but his action in these matters is subject to reversal by the President. He has also a limited veto power. A Secretary is appointed in the same manner and for the same term as the Governor, who, besides being the custodian of all territorial papers, and the recorder of the laws and proceedings of the legislature, performs the duties of Governor during a vacancy in that office.

There are also a Treasurer, a Chief Justice and Associate Justices, District Attorney, Marshal, and Superintendent of Education, all appointed by the President and confirmed by the Senate.

Territorial Legislature.—The legislative branch consists of two houses, the members of which are elected by districts every two years by popular vote. The legislative power extends to "all rightful subjects of legislation, not inconsistent with the Constitution and laws of the United States. But no laws can be passed interfering with the disposal of the soil. No tax shall be imposed upon property of the United States. Nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents." But all acts, besides being subject to the veto of the Governor, may be annulled by an Act of Congress.

Territorial Judiciary.—The judicial branch consists of a Chief Justice and at least two Associate Justices of the Supreme Court of the Territory, appointed by the President, and Justices of the Peace elected by the people. Each territory is divided into as many Judicial Districts as there are Supreme Court Justices, and the Supreme Court has both original and appellate jurisdiction. Appeals therefrom are taken to the Supreme Court of the United States.

Territorial Citizenship.—The Territories have no part in the election of President, nor have they Senators or Representatives, though each is entitled to one Delegate to the House of Representatives. Of the position of a citizen of an organized Territory, Bryce in his "American Commonwealth" says:

What may be called his private or passive citizenship is complete. He has all the immunities and benefits which an American citizen enjoys. But the public or active side is wanting, so far as the National Government is concerned, although complete for local purposes.

The District of Columbia.—The government of the District of Columbia differs to such an extent from that of the Territories as to require special mention. Congress has exclusive control of this District (Art. I., Sec. 8, Cl. 17). All laws are made by Congress and enforced by a Commission consisting of an officer of the Corps of Engineers of the Army of a higher rank than captain, and two civilians, citizens of the United States and residents of the District, appointed by the President with the consent of the Senate, for a term of three years. The Commission is authorized to make police and other municipal regulations, collect and apply taxes to the support of schools and other public purposes, and exercise all the powers usually vested in the governing body of cities, but the local taxes are fixed by Congress. The Judiciary of the District consist of a Supreme Court with a Chief Justice and six Associate Justices, which has general jurisdiction of law and equity. From this court appeals can be taken to the Court of Appeals of the District, consisting of three Judges, to which court is also taken any appeal from the decision of the Commissioner of Patents. From the Court of Appeals appeals may be taken to the Supreme Court of the United States.

Admission of States.—New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State

be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress. (Art. IV., Sec. 3, Cl. 1.)

How long a Territory shall remain such is a question to be determined by Congress alone, and its action is not affected by the population, wealth or the extent of the Territory. Political interests, as the retention of party power, and national questions, as slavery, have influenced the action of Congress to a large extent. For a long time there was no uniformity as to the population necessary for admission, and great discrimination has been shown from time to time in favor of Territories in which it was supposed the sentiment on great questions was the same as that of the dominant political party in Congress. There is now a rule which provides that no Territory will be admitted as a State until it has a population sufficient to entitle it to a representative in Congress.

Methods of Admission.—States are usually admitted in one of two ways. Either Congress passes an "enabling act," by which the people are authorized to adopt a constitution in which certain provisions may be required to be inserted, upon performance of which the Territory becomes a State; or, the people of a Territory submit a constitution to Congress, and upon its approval the Territory becomes a State.

Limitation.—The limitation placed upon the power of Congress to form States was designed as a protection to the large States which feared that they might be divided, and the small States, which feared that they might be consolidated into large States, and is another example of the compromises made in the Constitutional Convention.

GOVERNMENTAL FORMS IN STATES AND TERRITORIES.

STATES:

- **Legislative**
  - Senate
  - Lower House
  - → Elected by the people.
- **Executive**
  - Governor
  - → Elected by the people.
- **Judicial**
  - Appellate Courts
  - Courts of Original Jurisdiction
  - → Elected by the people or Appointed by Governor.

TERRITORIES:

- **Legislative**
  - U. S. Congress
  - Territorial Legislature
    - Council → Elected by the people.
    - House of Representatives → Elected by the people.
    - Limited by veto of Governor and act of Congress.
- **Executive**
  - Governor
  - Secretary
  - Treasurer
  - District Attorney
  - Marshal
  - Superintendent of Education
  - → Appointed by President with consent of Senate.
- **Judicial**
  - Supreme Court
    - Chief Justice → Appointed by President with consent of Senate.
    - Associate Justices → Appointed by President with consent of Senate.
  - Justices of the Peace → Elected by the people.

Territories become States

- by Act of Congress
- with Constitution adopted
  - before → Act of Congress.
  - after → Act of Congress.

CHAPTER VI.

GENERAL PROVISIONS.

National Credit.—Credit gives stability in national as well as in private concerns. A nation can better lose its armies than its credit. In consequence of these truths there was inserted in the Constitution a provision that:

> All debts contracted and engagements entered into, before the adoption of this Constitution, shall be valid against the United States under this Constitution, as under the Confederation. (Art. VI., Cl. 1.)

And later, after the accumulation of an enormous debt through the Civil War, an additional pledge was inserted in Amendment XIV. that:

> The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrections or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

The Supreme Law.—This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in

the Constitution or laws of any State to the contrary notwithstanding. (Art. VI., Cl. 2.)

Every governmental act repugnant to the Constitution is null and void. So also with the federal laws and treaties, of which the Supreme Court of the United States has said:

In every case of conflict, the Act of Congress or treaty is supreme, and the law of the State, though enacted in the exercise of uncontroverted powers, must yield to it.

As between federal laws and treaties, it is the rule that the one last made is the superior.

Oath.—The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to *support this Constitution;* but no religious test shall ever be required as a qualification to any office or public trust under the United States. (Art. VI., Cl. 3.)

Amendments.—The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes as part of this Constitution, when ratified by the legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that *no State, without its consent, shall be deprived of its equal suffrage in the Senate.* (Art. V.)

Ratification.—The ratification of the conventions of nine States, shall be sufficient for the establishment of this Constitution between the States so ratifying the same. (Art. VII.)

CHAPTER VII.

AMENDMENTS.

Bill of Rights.—The most frequent objection to the Constitution, before it was adopted by the States, was the absence of any provision asserting and guaranteeing the inherent rights of the people. The possibility that a strong central government might become as tyrannical as that of George III. aroused grave apprehension, and to quiet this fear Congress, at its first session, proposed twelve amendments and submitted them to the States for ratification. Of these, ten were adopted in 1791. The first eight constitute what is called the "Bill of Rights," a name adopted from the English Bill of Rights.

Freedom of Religion and Press.—Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. (Amendment I.)

The colonization of this country had been largely due to the attempts of the people to find freedom of worship, and this amendment was intended to guarantee its continuance. It does not, however, deprive the Government of its right and duty to recognize the teachings of religion; nor does it deter the Government from abolishing

polygamy and other immoralities when practiced under the guise of religion. This amendment also guarantees the right to freely and publicly discuss all questions relating to the conduct and policy of the Government, and asserts the right of the people to assemble and petition, the denial of which was enumerated among the grievances set forth in the Declaration of Independence. It does not, however, allow men to injure the reputation of their fellows by slander or libel.

Arms.—A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed. (Amendment II.)

Quartering of Troops.—No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law. (Amendment III.)

Both of these provisions were taken from the English Bill of Rights, and cover grievances enumerated in the Declaration of Independence.

Searches.—The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. (Amendment IV.)

This provision is for the protection of the people against such abuses as occurred under the Writs of Assistance. It does not prevent searches and seizures which are necessary for the recovery of stolen property ; but it places the practice under such regulations as to protect all parties in their rights.

Rights of Accused.—No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall he be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. (Amendment V.)

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense. (Amendment VI.)

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. (Amendment VIII.)

These three amendments are intended as a protection to persons accused of crime. A *capital crime* is one of such magnitude as to be punishable by death. An *infamous crime* is one denoting a depraved mind and punishable by long imprisonment.

Indictment.—A *grand jury* is a body of men selected by lot at stated periods from among the citizens of a defined district to inquire concerning crimes committed within their districts. In most States it cannot consist of more than twenty-three nor less than sixteen persons. The grand jury usually considers only those cases submitted to it by an officer of the court, and in secret session takes the testimony of witnesses as to the commission of a crime, and decides whether the evidence is

sufficient to warrant an accusation. This decision requires the concurrence of twelve men. If it is deemed proper, an *indictment*—that is, a written accusation charging a person with the commission of the crime—is presented to the court, and the person therein accused of the offense is held for trial. A *presentment* is an informal accusation of a crime made by a grand jury upon its own knowledge in cases not submitted to it by an officer of the court. As a preliminary to a criminal prosecution the latter has fallen into general disuse in this country.

Bail.—*Bail* is the deposit by an accused person of a certain sum of money with the officers of the court, or a bond given by responsible persons to pay a certain sum of money to the Government, if the accused does not obey the orders of the court, such as to appear for trial.

Trial.—The accused is entitled to a speedy and public trial, and can demand that it be by a *jury*, which is a body of men selected by lot from the district within which the crime was committed, and who are sworn to impartially decide the guilt or innocence of the accused. Such a jury is called a *petit jury*. The accused is also entitled to know the charges against him, to hear and examine the witnesses sworn, and the Government must provide him with counsel, if he is unable to do so himself. He cannot be compelled to testify, nor can his refusal to do so be considered an indication of his guilt. Moreover, he can only be tried once for the same offense, unless the jury fails to agree or unless he secures a new trial.

Protection to Property.—Amendment V., besides guaranteeing life and liberty to the individual, granted him protection in his property rights, but the Government is

not deprived thereby of its right to take private property for public purposes whenever necessity demands. This right of the Government is called the *Right of Eminent Domain*, and unless it existed individuals might obstruct and even prevent necessary public acts. Thus the Government may appropriate property for roads, docks and other improvements, but it must pay a fair market value for it, which, unless the owner and the officials can agree, is determined by a jury of impartial men.

Jury Trial in Civil Suits.—In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reëxamined in any court of the United States, than according to the rules of the common law. (Amendment VII.)

Powers Reserved.—The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people. (Amendment IX.)

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. (Amendment X.)

Eleventh and Twelfth Amendments.—No further amendments were made to the Constitution until 1798, when the Eleventh was adopted. (See page 163.) In 1804 Amendment XII. was added. (See page 123.)

Slavery.—It was not until 1865 that any further amendments were made, when the slavery question was settled by the adoption of Amendment XIII.

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. Congress shall have authority to enforce this article by appropriate legislation.

The Freedmen.—The freedmen thus created were made citizens and their rights were defined by Amendment XIV. (See pages 61, 96, 99 and 181.) This amendment, in order to extend the provisions of the "Bill of Rights" to the new citizens, further provided that no State shall

> deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Amendment XV., made in 1870, was the final step in granting full rights of citizenship to the freedmen. By the Thirteenth Amendment their freedom had been recognized. By the Fourteenth they have been declared citizens and their civil rights have been enumerated. The Fifteenth extended to them political rights under the limitations imposed by the laws of the several States by providing that:

> The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude. The Congress shall have power to enforce this article by appropriate legislation.

Object of Amendments. — The province of the amendments is briefly stated by Judge Cooley, as follows:

> The first amendments were for the purpose of keeping the central power within due limits at a time when the tendency to centralization was alarming to many persons; the last were adopted to impose new restraints on State sovereignty at a time when State powers had nearly succeeded in destroying the national sovereignty.

CONSTITUTIONAL RIGHTS OF PRIVATE CITIZENS.

Private Rights, "Bill of Rights."

- Freedom of
  - Religion.
  - Speech.
  - Press.
- Right to bear arms.
- Prohibiting
  - Quartering troops.
  - Search warrants (general).
  - Confiscation of
    - Houses.
    - Papers.
    - Effects.
- Right, if accused of a crime
  - To be indicted by Grand Jury.
  - *Not* to be
    - Twice tried for same offense.
    - Compelled to testify.
  - To have a
    - Speedy *and* Public
    - Trial.
  - To be confronted by / To compel attendance of
    - Witnesses.
  - *Not* to be
    - Required excessive bail.
    - Subject to cruel *or* unusual Punishments.
- Right to Jury Trial in
  - Criminal
  - Civil
  - Actions.
- Right to
  - Life
  - Liberty
  - Property
  - and can only be deprived by due process of law.

Public Rights.

- Prohibiting
  - Slavery.
  - Involuntary servitude, except for punishment for crime.
- Not to deny right to vote on account of
  - Race.
  - Color.
  - Previous condition of servitude.

PART FOURTH.

PRINCIPLES OF LAW.

CHAPTER I.

INTERNATIONAL LAW.

Definition.—International Law, or the Law of Nations, in its commonly accepted meaning, is the code of rules which civilized nations recognize by consent and usage as that which should govern their mutual intercourse. In a more general sense it comprises those principles of natural right and justice which should regulate international conduct.

I. RULES IN TIME OF PEACE.

Divisions.—Rules in time of peace may be divided into four classes—those relating to (1) Sovereignty, (2) Territory, (3) Aliens and (4) Intercourse.

1. Sovereignty.

Recognition of Sovereignty.—Every state or nation is independent and sovereign, and the equal in that respect of every other state in the world, without regard to the extent, power or character of its government. In a nation with a federal form of government, this rule applies to the central government alone.

Intervention.—It is a violation of a nation's sovereignty to interfere with its domestic affairs or to intervene in case of civil war. However, in extreme cases, intervention is considered justifiable upon the ground of humanity, as when a government is conducting a war with great cruelty, or to "maintain the balance of power," as where a nation whose increase of power may become a menace to its neighbors is restrained in its aggression upon a weaker state. This has often happened in Europe. Of somewhat the same character was the Monroe Doctrine, promulgated in 1823, which declared that the United States would "consider any attempt on the part of the allied European powers to extend their system to any portion of our hemisphere as dangerous to our peace and safety."

2. Territory.

Definition.—The land over which a state has exclusive political control is its territory, and its rights of government are called *territorial rights*. Such territory may be acquired either by discovery and occupation, by possession for a long time, by conquest or by gift or purchase. The transfer of territory from one nation to another is termed *cession*. A state bounded by the ocean, or *high seas*, possesses territorial rights over a strip of water three marine miles wide extending along its coasts and over the sea between adjacent headlands. Such a strip of sea is termed *territorial waters*. Rivers flowing between two states belong to both, but rivers passing from one state into another are part of the territory of each state while within its boundaries.

The ships of a nation in the territorial waters of another nation must obey its laws, but on the high seas they are subject only to the laws of their own country.

3. Aliens.

Definition.—*Aliens* are persons within a country other than that to which they owe allegiance. They are generally subject to the laws of the state where they are, but this rule does not apply to sovereigns, their diplomatic representatives, or to the ships of war and military forces of other states.

Rights.—A *domiciled alien*—that is, one having a residence or a domicile—cannot usually own land or take part in the government, but he may hold other property, make contracts and claim protection of the courts, and is subject to taxation and to the requirements usually imposed upon citizens. Aliens, however, who are travelers only, are exempt from many of these duties and are entitled to special privileges.

Naturalization.—An alien may become a citizen of the country of his domicile by taking an oath of allegiance to the government. This is called *naturalization*, and nearly all nations now recognize that this act severs the relationship of the person with the country to which he formerly owed allegiance. This severance of relationship is called *expatriation*.

Criminals and Extradition.—Aliens who are fugitives from justice are subject to special rules. If their crimes are of a political nature they will not generally be given up on the demand of another government, but if they

have committed felonies, they are usually surrendered to the state in which the crime was committed. This is called *extradition.*

4. Intercourse.

Treaties.—The most important duty devolving upon diplomatic representatives (see page 132) is the negotiation of treaties. The usual subjects of treaties are peace and friendship, commercial privileges, postal service, extradition, fisheries, boundaries, annexation and the settlement of claims. There are also treaties which establish Joint High Commissions, Mixed Commissions and Tribunals of Arbitration for the settlement of controversies.

International Commissions and Arbitration.—A *joint high commission* is constituted of an equal number of commissioners from each country, and matters upon which they may disagree are usually submitted to an *umpire*, named by the two interested governments or by the chief magistrate of another nation, and the decision of the umpire is final. In some instances the umpire sits with the commissioners during their sessions, in which case the body is termed a *mixed commission.* A *tribunal of arbitration* is generally distinguished from a mixed commission by the importance of the subject submitted to it, and because more than one nation besides the parties to the controversy appoint arbitrators. International arbitration is becoming more and more employed by governments, and all questions in dispute are considered proper for arbitration except those that involve a nation's honor or dignity, such as an insult to its flag or official representatives.

2. RULES IN TIME OF WAR.

War.—*War* is a public contention between two governments through the agency of their armies and navies. An insurrection which is not sufficient to support a form of government is not a war, but when the insurgents are strong enough to maintain a government, an uprising of this character becomes a *civil war*.

Condition of States between Peace and War.—When a nation has suffered a wrong for which satisfaction is refused, it may, before an actual appeal to arms, employ reprisal or embargo to obtain redress. A *reprisal* is the seizure and retention of the ships and property of the citizens of an offending state until satisfaction is accorded. An *embargo* is the detention by a nation of the ships and cargoes within its ports. It is the duty of a government, before commencing war, to exhaust every means to obtain a peaceful settlement of the difficulty. The last demand for satisfaction which is made upon an offending state is termed an *ultimatum*. It is usually peremptory in style, and limits the time for compliance, and if the other nation refuses to agree to its terms, war follows. The commencement of a war divides nations into two classes, those who are actually engaged in the war, called *belligerents* (war-wagers), and those who are not, called *neutrals* (neither-sided).

3. OBLIGATIONS OF BELLIGERENTS TO EACH OTHER.

Treaties.—As a rule, all treaties between two contending nations are abrogated or abolished by the commencement of war, but a treaty relating to the method of

conducting hostilities and those which recognize a state's independence or fix its boundaries are not affected.

Citizens.—Theoretically, all the citizens and residents of belligerent states, as well as the governments, are hostile to each other, and they are liable to detention and their goods to seizure; but this rule has been much modified by the growing sentiment against causing non-combatants to suffer for the public wrongs done by their government.

Conduct of Hostilities.—The rules of civilized warfare are intended to lessen as much as possible the horrors and sufferings which it inflicts upon the individual. The most important rules prohibit a belligerent from:

1. The employment of savages against an enemy;
2. The unnecessary infliction of suffering to the people and injury to the private property of an enemy, as in the case of massacre and pillage;
3. The inhuman treatment of prisoners;
4. The confiscation of private property, except when justified by necessity;
5. The use of poison and poisoned weapons.

Communications.—The communications between hostile armies are carried on by means of *flags of truce* and *cartels*. The first are employed for any communication between belligerents, while the latter are agreements for the exchange of prisoners.

Rules on Sea.—The restrictions imposed upon a belligerent apply chiefly to hostilities upon land, and have not been so generally applied to naval operations. The vessels and cargoes owned by the citizens of an enemy may, therefore, be seized by a hostile government. *Letters of*

marque and reprisal are commissions issued to vessels termed *privateers* fitted out by private citizens, which entitle them to capture the vessels belonging to the citizens of an enemy. Privateering has, however, fallen into general disuse since 1856, when it was discontinued by the European nations under the "Agreement of Paris."

Capture and Prize.—The seizure of an enemy's ship or cargo is termed *capture*, and the property is called *prize*. The title to a prize does not pass to the captor until it has been decreed by a court, known as a *prize court*, which is given jurisdiction in such cases by the belligerent government.

Truce, and Termination of War.—Hostilities may be temporarily suspended for a definite time by an agreement termed a *truce* or *armistice*. A war is terminated and peace restored by a proclamation of sovereignty by the conquering nation or by a treaty between the belligerents. A *treaty of peace* usually contains agreements as to the disposal of prisoners, the withdrawal of military forces, the cession of territory, the payment of indemnity and other subjects of a like nature.

4. OBLIGATIONS OF NEUTRALS AND BELLIGERENTS TO EACH OTHER.

Recognition of Belligerency.—A *state of neutrality* exists only when there is a war. It is important, therefore, for a nation to determine whether an armed contention is a civil war or an insurrection. This may be shown by the acts of a government in relation to its rebellious citi-

zens, such as the proclamation of a blockade of insurgent ports or official negotiations with the insurgent government. Under these circumstances other governments will recognize the belligerency of the rebels. So, also, a nation will recognize the belligerency of insurgents when it is convinced that they have established a stable and responsible government. It is the duty of neutrals to act with impartiality towards both belligerents. They must not permit the enlistment of men for the armies or navies of either belligerent. They must not allow the ships of either to be built or fitted out in their ports, nor must they loan money to either. The citizens of a neutral nation are also prohibited from carrying contraband of war and from attempting to break a blockade.

Contraband of War.—*Contraband of war* comprises articles which may be employed in carrying on war, such as arms, munitions, ships, beasts of burden, and in some cases even money and provisions; and belligerents possess the right to seize such articles when found in a neutral ship, unless in the waters of a neutral nation. The vessel and the remainder of the cargo, however, are exempted from seizure unless they belong to the owner of the contraband goods.

Blockade.—A *blockade* is the right to prevent and make unlawful all trade and intercourse with certain specified ports or portions of the enemy's coast. It is enforced by means of a fleet which intercepts vessels which attempt to enter or leave the blockaded territory. As blockade is purely a war right, a nation cannot blockade its own ports; and therefore, in the case of an insurrection, the proclamation of a blockade of coasts held by

insurgents is a recognition of their belligerency. Any attempt to violate a blockade subjects a ship to capture, provided that the blockade is *actual*—that is, that there is sufficient naval force present to maintain it; that the offending neutral had knowledge that a blockade existed; and that there was an attempt to "run the blockade."

Visit and Search.—In order to make the rules as to contraband of war and blockade effective, a belligerent possesses the right of *visit and search*, by which its cruisers are authorized to stop and examine ships on the high seas for the purpose of ascertaining their nationality, destination and the character of their cargoes. And to this right neutrals must submit.

INTERNATIONAL LAW.

RULES IN TIME OF PEACE.

Sovereignty:

- *Recognition of Sovereignty*
  - Equality.
  - Independence.
- *Intervention* because of
  - Balance of power.
  - Monroe Doctrine.
  - Humanity.

Territory:

- *Acquisition by*
  - Discovery and occupation.
  - Prescription.
  - Conquest.
  - Gift or purchase.
- *Rights over*
  - Territory.
  - Territorial waters.
  - Rivers.
  - Ships.

Aliens:

- *Exempt from Rules*
  - Sovereigns.
  - Diplomatic representatives.
  - Public ships.
  - Military forces.
- *Domiciled*
  - Rights to
    - Hold personal property.
    - Make contracts.
    - Appeal to courts.
  - Duties—those of a citizen.
- *Temporarily Resident*
  - Rights—special privileges.
  - Duties—obedience to laws.
- *Naturalization.*
- *Extradition.*

Intercourse:

- *Diplomatic Channels*
  - Ambassadors.
  - Ministers.
  - Diplomatic Agents.
  - Chargés d'Affaires.
- *Treaties*
  - Peace and friendship.
  - Commercial privileges.
  - Postal service.
  - Extradition.
  - Annexation.
  - Fishery rights.
  - Boundaries.
  - Claims.
- *Arbitration*
  - Joint High Commissions.
  - Mixed commissions.
  - Tribunals of arbitration.

RULES IN TIME OF WAR.

Acts prior to Actual War { Reprisals. / Embargoes. / Ultimatum.

I. Obligations of BELLIGERENTS to Each Other.

Effects on Relations:

- *Public* { Treaties { Not abrogated, when *final*. / Abrogated, when *not final*
- *Private* { Liability { Detention of person. / Seizure of property.

Conduct of Hostilities on Land:

- *Hostile Acts Prohibited* { Employment of savages. / Massacre and pillage. / Inhumanity to prisoners. / Confiscation of private property. / Use of poison.
- *Communication by* { Flags of truce. / Cartels.

Conduct of Hostilities at Sea:

Capture and Prize { by public ships. / by privateers.

Cessation of Hostilities:

Truces.

Termination of War—by Treaty:

Subjects of Peace Treaties { Disposal of prisoners. / Withdrawal of troops. / Cession of territory. / Payment of indemnity. / Etc., etc.

II. Obligations of NEUTRALS and BELLIGERENTS to Each Other.

Belligerency:

- *Recognition of*
  - By act of other belligerent
    - Proclamation of blockade.
    - Negotiations with other party.
  - By neutral.

Neutrality:

- *Violation of*
  - By neutral nation
    - Enlistment of men.
    - Fitting out ships.
    - Loaning money.

Neutral Trade:

- *Prohibitions*
  - To carry contraband of war
    - Arms.
    - Munitions.
    - Ships.
    - Beasts of burden.
    - Money and provisions (in some cases).
  - To break a blockade when
    - Blockade is actual.
    - Neutral had knowledge.
    - Attempt to break it.
- *Visit and Search.*

CHAPTER II.

MUNICIPAL LAW.

Definitions.—Municipal Law consists of those rules of conduct prescribed by the supreme power of a state to regulate the relations between the state and its citizens, or between the citizens themselves. It is either *written* or *unwritten*. The unwritten law of this country comprises Common Law and Equity (see page 162). The written law of the United States consists of the Federal Constitution, the Acts of Congress and Treaties. The written law of a State consists of its constitution and statutes. A *statute* is a law established by the legislature of a State.

Object.—The object of Municipal Law is to protect rights and punish wrongs. Rights are of two kinds—*political* and *civil* (see page 4). So, also, wrongs are of two kinds—public, or *crimes*, and private, or *torts*.

I. CIVIL RIGHTS.

1. Absolute Rights.

Personal Security.—This includes the *right of life*, the violation of which is one of the gravest of crimes; and the *right of reputation*—that is, the favorable opinion of others—defamation of which, if oral, is *slander*, and if by writing or printing, *libel*.

Personal Liberty.—This is the natural right of every person to move about or remain at rest, except as he is restrained by law.

Personal Property.—This is the natural right of every person to acquire, use and dispose of property in any manner save as he is restrained by law. *Property* is that which can be exclusively owned or enjoyed, as a horse, a house, or land. But air, light and the unconfined forces of nature, although capable of enjoyment, are not property.

Divisions of Property.—Property is divided into real and personal. *Real property* is that which is considered immovable, as land. *Personal property*, also called *chattels*, is that which is considered movable, as horses and machinery. Real property includes lands and certain rights connected with the use of land, such as a *right of way*, or passage over the lands of another; a *franchise*, or the right to exercise certain privileges, such as to build and manage railroads; and *rent*, or the right to receive a regular profit from lands. Personal property consists of tangible movable objects, of certain minor rights connected with real property, and of such property as stocks, promissory notes, copyrights and debts.

Estates in Real Property.—The interest of a person in property is called an *estate*. Estates in real property are *real estate*, which is a permanent and unending interest, and *personal estate*, which is one with some termination. Real estates in real property are of two kinds—an *estate in fee*, which gives the owner power to absolutely dispose of the property, and which, if not disposed of, descends to his heirs; and an *estate for life*, which gives the owner

power only to use the property during his life or during the life of another. Among the most important life estates is an *estate in dower*, which is one that a surviving wife has in one third of the real property owned by her husband at any time during their married life, and which was not disposed of with her consent.

Leases.—The most important personal estate in real property is an *estate for years*, which begins and ends at specified dates and is created by an instrument called a *lease*. The *lessee* or *tenant* does not own the land, but has the right to its use during the term of the lease. He is usually required to make ordinary repairs to the premises, and to pay to the *lessor* or *landlord* a fixed amount for the use of the premises, called *rent*. If the tenant does not pay his rent as agreed, the landlord may cause him to be removed from the premises. This is called *eviction*.

Estates in Personal Property.—Estates in personal property are of two kinds—*absolute*, one that cannot be destroyed without the act of the owner ; and *qualified*, one that can be destroyed or lost without the act of the owner, such as that in wild animals.

Title.—*Title* is the right of ownership of an estate. Titles to real property are of two kinds—by *descent*, as where an heir inherits the estate from his ancestor ; and by *purchase*, which includes all other means of acquisition. The most common title by purchase is that created by *act of the parties*, which includes title by grant and title by devise. *Title by grant* is either *public*—that is, a title from the United States or a State by an instrument called a *patent ;* or *private*—that is, from another person by a written instrument called a *deed*. *Title by*

devise is that obtained by a written instrument called a *will*.

Title to personal property may be acquired either by the *sole act of the owner*, such as that in property which a person produces, or in a wild animal which he captures; by *operation of law*, such as that acquired in the personal property of a relative who died without leaving a last will and testament; and by the *joint act of the present and former owners*, such as that created by a gift, last will and testament or contract. *Title by gift* is that which a person has in property gratuitously transferred to him. *Title by last will and testament* is that by which one becomes the owner of personal property of a deceased person by the last will and testament of such person. *Title by contract* is that by which a person becomes the owner of personal property through its voluntary transfer to him by another for some consideration.

Contracts.—A *contract* is an agreement between two or more persons to do or not to do some thing. Four conditions are necessary to a complete contract: (a) Parties able to contract; (b) a sufficient consideration; (c) a subject to be contracted for; and (d) an actual agreement, or, as it is called, a "meeting of the minds."

Parties.—Parties able to contract must be of full age. Contracts by minors, except for necessary articles of support, are not binding upon them. They must be of full understanding. Contracts made with idiots or others deprived of their minds are of no effect, as against them. They must also be free to contract. Any agreement made by a person under restraint or force is not binding upon him.

Consideration.—A *consideration* is (a) something of value to the person receiving it, or of detriment to the person giving it, (b) love and affection existing between a parent and child or husband and wife, or (c) mutual promises made between persons at the same time.

Subject.—The subject of a contract must be something real, as property, service or labor. It must also be lawful and moral. Contracts for smuggling or other unlawful acts are not binding.

Classes of Contracts.—Contracts are either *oral*—that is, by word of mouth—or *written*. Written contracts are either under seal—that is, with a seal affixed to the signature—or without seal. The most common forms of contracts under seal are deeds and mortgages.

Deeds.—A *deed* is defined as a writing, signed, sealed and delivered between the parties. It is the instrument by which private grants of land are made. The person making the deed is called the *grantor;* the person to whom it is made, the *grantee.* A deed must name the parties, describe the consideration, the property and estate conveyed, and contain the signature and seal of the grantor. The most common deeds are *quitclaim* deeds, by which the grantor disposes merely of his interest in the property, and *warranty* deeds, by which the grantor guarantees that he is the owner of the property and promises to protect the grantee in his possession. The *execution* of a deed is the actual signing and affixing of a seal. In most States, before a deed can be placed on record, the grantor is required to acknowledge that he executed the deed before an officer, such as a judge, justice of the peace or notary public, who must certify to

the fact in writing upon the instrument. The deed so executed and acknowledged is of no effect unless it is actually delivered to the grantee.

Mortgages.—*Mortgages* resemble deeds in that they are transfers of interest in real property, and require the same formality in their execution, acknowledgment and delivery. They do not, however, constitute actual transfers of the title, like deeds, but only a claim to the property as security for the payment of some indebtedness. A mortgage must contain a description of the parties, called the *mortgagor* and *mortgagee*, the consideration, the property mortgaged, and, among other things, a clause stating that the grant is made as security for the payment of some indebtedness, with the terms of payment, and that upon such payment the grant becomes void. Mortgages usually accompany *bonds*, which are obligations to pay certain moneys at certain times. They are then spoken of as *collateral security*, because they can only be enforced in case the conditions of the bond are not fulfilled. A mortgage is enforced by *foreclosure*, which is a legal remedy by which the property described in the mortgage can be sold and the proceeds applied to the payment of the debt. It is usual in the case of both deeds and mortgages for a wife to join in the execution with her husband. In this way only is the property relieved of her dower interest which she has in it by reason of the marriage.

Protection to Grantees and Mortgagees.—For the purpose of avoiding difficulties it is customary for grantees and mortgagees to require with the deed or mortgage a *search* or *abstract of title*, which is a synopsis from

the public records, extending over a number of years and showing the source and character of the title of the grantor or mortgagor to the property. For further protection deeds and mortgages are usually *recorded*, that is, copied in full in the office of the County Clerk or Registrar of Deeds of the county where the property is situated. If not so recorded, the grantee or mortgagee is liable to lose the interest granted to him, for it is a rule of law that if there be two or more deeds or mortgages upon the same property, the one first recorded takes preference over all the others without regard to its date.

Chattel Mortgages.—A *chattel mortgage* is a mortgage upon personal property, given as security for the payment of an indebtedness. This does not have to be recorded, but for protection it is usual to *file*, that is, deposit a copy in the office of the Clerk of the Town where the property is.

Other Written Contracts.—Contracts in writing, not required to be under seal, are: (a) Contracts to sell any interest in lands ; (b) contracts for services that cannot be performed within a year ; (c) contracts for the purchase and sale of personal property exceeding in value a certain amount, usually fifty dollars ; (d) contracts to be responsible for the debt of another. The last is known as *guaranty*, and the person making such guaranty is called a *guarantor*.

Sale.—A contract of *sale* is one by which the ownership of personal property is transferred to another for a *money* consideration. The person making the sale is called the *vendor ;* the purchaser, the *vendee*. Among the rules governing sales are the following: (a) If the goods are

sold by sample, they must be as good as the sample; (b) if the goods are ordered for a particular purpose, known to the vendor, they must be suited to the purpose; and (c) in the sale of foods they must be wholesome.

Bailment.—A contract of *bailment* is one by which the possession of personal property is transferred from one person, called the *bailor*, to another, called the *bailee*, for some purpose, to be returned when the purpose is accomplished. The most important bailment is called *locatio*, and is the delivery of an article to the *bailee* for *his* use upon compensation *to* the *bailor*; or for the performance of labor upon an article *by* the *bailee* upon compensation *from* the *bailor*. The hiring of horses, the repairing of a watch by a watchmaker, the transportation of goods by railroad companies and the care of property by innkeepers are instances of locatio.

Agency.—A contract of *agency* is one by which a person appoints another to act for him in some business transaction. The person making the appointment is called the *principal*; the person appointed, the *agent*. Agents are of two kinds—*general*, who perform all the business of the principal at a particular place; and *special*, who are employed for some particular purpose. Among the rules governing agency, the most important one is that any contract or act of the agent within the line of his employment is binding upon the principal.

Partnership.—A contract of *partnership* is one by which two or more persons unite their labor or property or both in some business in which they agree to share the losses and divide the profits. In this relation the partners own

in common all the property, and each partner is the agent of the partnership. For the debts of the partnership, not only the common property, but the individual property of the partners is liable after the partnership property is exhausted.

Corporations.—A *corporation* is a body of individuals created by law under a special name, with the power of acting as a single individual. Corporations are either *public*, as a city or county, or *private*, as those organized for religious, charitable, social, manufacturing and business purposes. Their usual powers, derived from general laws or a special act, called a *charter*, are to sue and be sued; to purchase and own lands and chattels; to make by-laws for their government; to remove members and elect others in their place or in place of those who may die. Besides these, exceptional privileges, such as to erect telephone poles or lay pipes, are sometimes given to a corporation. This is called a *franchise*. The capital of a manufacturing or business corporation is divided into shares of stock, and those who own the shares are called members or *stockholders*. The stockholders elect some of their number *directors* or *trustees*, to carry on the affairs of the corporation, and these, as a *board*, choose its officers. The liability of stockholders, directors and officers for the debts of a corporation are fixed by statute.

Insurance.—A contract of *insurance* is one by which a person or corporation, in return for certain compensation, known as *premium*, undertakes to indemnify another against loss or injury. *Fire and marine insurance* cover losses sustained by fire or the mishaps of shipping. *Life insurance* is a contract by which the insurer agrees to

pay a certain sum to the insured after the expiration of a fixed time, or to his representatives at his death. The contract of insurance is contained in an instrument called a *policy*, which also contains a description and facts relative to the insured person or property, known as the *risk*, and any misrepresentations on the part of the insured at the time of making the contract will release the insurer from liability.

Indorsement.—A contract of *indorsement* is one by which a person agrees that he will pay the amount of a negotiable paper to its holder when due, if the maker does not. *Indorsement* consists in the writing by a person of his name across the back of the instrument. *Negotiable paper* consists of promissory notes, bills of exchange, checks, etc., when they are payable to some person or "bearer" or "order." A *promissory note* is a promise in writing to pay a certain sum of money at a certain time. The party signing the note is the *maker;* the person to whom it is payable, the *payee.* A *bill of exchange*, also called a *draft*, is an order in writing by one person upon another to pay a certain sum of money to a third person either upon presentation or at some time after date of presentation. The person upon whom such order is made is not liable therefor until he *accepts it*—that is, promises in writing upon its face to pay it. He is then called an *acceptor*, and becomes the principal debtor. A *check* is a written order upon a bank to pay to a person named a sum of money and charge the same to the account of the person making the check. To fix an indorser's liability the negotiable paper must be presented for payment, at the time it becomes due, at the

place where it is payable. If payment is refused, the instrument is *protested*—that is, non-payment is certified—usually by a notary public, and notice of this fact must be given at once to the indorser.

Liens.—A *lien* is the right of a person to retain possession of the property of another until certain demands are satisfied. Among those entitled to this right are innkeepers and railroad companies for their services upon the property which they have cared for or carried. They may sell the property and apply the proceeds to the payment of the claims. *Mechanic's liens* are those held by contractors, mechanics and others who furnish labor and materials for buildings. They are governed by statute, and can only be enforced by legal proceedings similar to the foreclosure of a mortgage.

Remedies for Violation of Contracts.—If there is a violation of a contract, the injured party has a remedy by legal action by which he can compel the performance of the contract or can recover money damages for the injury he has sustained.

Wills and Testaments.—A last *will* and *testament* is an instrument, usually required to be in writing, by which a person disposes of his property, to take effect after his death. Only persons of full age and mental capacity can make wills of *real* property, but in some States certain minors can so dispose of their *personal* property. (A person dying without a last will and testament is said to die *intestate*.) It is necessary that the instrument be signed by the maker, called the *testator*, who in most States must acknowledge such act, with the statement that it is his last will and testament, in the presence of two or

more witnesses, who are not interested in the will, and who then sign, in the presence of each other and the testator, a statement of such execution and acknowledgment. Changes are sometimes made in wills and testaments, by instruments called *codicils*, which must be executed with the same formalities as the original instruments. A will and testament becomes effectual upon the death of the testator, unless it has been destroyed by his direction or has been expressly revoked by a subsequent will. After the death of the testator the will and testament are proved, or *probated*, before a surrogate or probate judge, and the real property passes at once to those entitled to it. The affairs of the estate are settled, and distribution of the personal property is usually made by a person named in the will, called an *executor*. When a person dies intestate his real property passes directly to his heirs, and his affairs are settled and his personal property is distributed by an officer appointed by the surrogate, called an *administrator*.

2. Relative Rights.

Husband and Wife.—The contract of marriage is regulated by statute in the several States, but as a rule the following persons are debarred: (a) Males under fourteen and females under twelve years of age; (b) persons having another husband or wife living; and (c) persons related to each other within certain degrees. The mutual promises of the parties constitute the consideration. In some States a license issued by an official is required before a marriage can be celebrated. *Divorce* is the judicial termination of a marriage contract; the grounds upon

which it is granted are fixed by statute. In the marriage relation the husband is considered the head of the family. He can determine the place of abode and can compel the wife's return if she leaves him without cause. He is required to support and protect her, and in the buying of articles for the home the wife is considered the agent of the husband, so long as she lives with him ; but he is released from all obligations of this character if she leaves him without cause.

Parent and Child.—Children owe to their parents *obedience* and *service* during their minority. Parents are obliged to protect the child, provide necessary food and clothing, and educate him according to his station in life.

Guardian and Ward.—A *guardian* is one who has the care of the person or property of a minor, called a *ward*. A guardian of the person is entitled to obedience, but not service. A guardian of the property must support and educate the ward according to the ward's station and property. He cannot make any profit out of the property for himself, and is liable for any loss occasioned by his negligence.

Master and Servant.—A *master* is one who by virtue of a contract has authority over another person, called a *servant*. Servants are of two kinds—*apprentices*, or those placed under the authority of another for the purpose of learning some trade ; and *hired servants*, or those who engage to render services in return for wages. The master is entitled to obedience and service during the term of the contract. The servant is entitled to receive the agreed wages during the time of the contract, unless he leaves or is discharged for cause.

2. WRONGS.

1. Torts.

Torts.—A *tort* is the intentional and wrongful doing or not doing of some act by which another is injured. The most common torts are slander, libel, fraud and assault. *Slander* is the willful injury of the reputation of another by spoken language. *Libel* is the willful injury of the reputation of another by writing, printing, engraving or other permanent form. Libel is also a crime. *Fraud* is a false representation, made with the intent to deceive, and resulting in actual injury. *Assault*, which is also a crime, will be defined later.

2. Crimes.

Definitions.—A *crime* is an act or omission forbidden by law and punishable by death, imprisonment, fine or other penalty. A *felony* is a crime punishable by death or imprisonment in a state prison. All other crimes are *misdemeanors*. Two elements are necessary to constitute a crime—the criminal intent and the criminal act. A *principal* is one who commits the crime, or one who is present aiding and abetting the act. An *accessory* is one who, not present, yet aids and abets the commission of a felony, or one who, with knowledge of the crime, aids the offender to avoid arrest and punishment. In the commission of treason and misdemeanors all the wrong-doers are principals.

Crimes against the State.—The principal crimes against the State are treason, illegal voting, bribery, aiding

escape of prisoner, counterfeiting, forging, perjury and influencing another person to swear falsely, which is called subornation of perjury.

Crimes against Persons; Suicide.—The principal crimes against persons are suicide, homicide, assault, robbery and libel. *Suicide* is the intentional taking of one's own life. The attempt to commit suicide is also a crime.

Homicide.—*Homicide* is the killing of a human being by another. *Murder in the first degree* is the wrongful killing of a person either with a premeditated design to cause his death; or by a reckless act dangerous to life, although without intent to take life; or by a person engaged in the commission of a felony. The usual punishment is death or life imprisonment. *Murder in the second degree* is the intentional killing of a human being without premeditation. The usual punishment is life imprisonment. All other forms of homicide are termed *manslaughter*. Homicide is *excusable* when committed by accident. Homicide committed in the defense of self or another is *justifiable*. No person can be convicted of homicide unless it is proved that a life has been taken and that he is the one who took it.

Assault.—An *assault* in its highest form is either an attack upon a person with intent to kill or commit a felony, with a weapon likely to produce death; or the administration of poison or drugs dangerous to life. It is a felony. *Assault and battery* is an attack upon a person with the fists with the intention to do him bodily injury. This is a misdemeanor.

Robbery.—*Robbery* is the unlawful taking of personal property from a person against his will, by force or vio-

lence, or by arousing fear in such person. Secretly picking a person's pocket is not robbery.

Crimes against Property; Arson.—The principal crimes against property are arson, burglary and larceny. *Arson* in its highest degree consists in setting fire at nighttime to a building or car or other structure in which there is a human being. The punishment varies in the different States, the most severe being imprisonment for life.

Burglary.—*Burglary* is the forcible entering of a house or room for the purpose of committing a crime. Its highest degree occurs when such entry is made in the night, when a human being is within, by a person armed with a dangerous weapon. It is a felony.

Larceny.—*Larceny* is the taking, concealing or withholding of personal property with the intent to deprive the owner of its possession. The highest degree, called *grand larceny*, consists in taking property from the person of another in the nighttime, or in the taking at any time of property above a certain value. All other stealing is *petit larceny*.

Bigamy.—The principal crime against public morals is bigamy. It is *bigamy* when a person, having a living husband or wife, marries another.

Arrest.—*Arrest* is the apprehension of an offender in order that he may be punished for his crime. It is usually made by an officer upon a *warrant*, which is a mandate of a court commanding the arrest of the offender. But an arrest may be made without a warrant when the offender is detected in the actual commission of a crime.

MUNICIPAL LAW.

- **MUNICIPAL LAW**
  - UNWRITTEN
    - *Common Law.*
    - *Equity.*
  - WRITTEN
    - *Federal*
      - Constitution.
      - Acts of Congress (Federal Statutes).
      - Treaties.
    - *State*
      - Constitutions.
      - Acts of Legislatures (State Statutes).

CIVIL RIGHTS.

I. ABSOLUTE RIGHTS:

1. *Personal Security* — Life. Reputation.
2. *Personal Liberty.*
3. *Private Property.*

Real Property — Rights of — Ways. Franchises. Rents.

Personal Property.

Estates—

In Real Property.

- As to Tenure
  - Real Estates
    - in Fee.
    - for Life — Life Estate. Dower.
  - Personal Estates (*Lease*) — Landlord and Tenant.
- As to Title
  - by Descent.
  - by Purchase — by Grant — Public—Patent. Private—Deed, Mortgage. by Devise—Will.

In Personal Property.

- As to tenure — Absolute. Qualified.
- As to Title
  - By operation of law.
  - By sole act of owner.
  - By joint act of parties — Gift. Will and testament. Contract.

ABSOLUTE RIGHTS—*Continued.*

Contracts—

Conditions as to.

- Parties
  - Of full age.
  - Of full understanding.
  - Free to contract.
- Consideration.
- Subject
  - Moral.
  - Lawful.
- Meeting of the minds.

Classes.

- Oral.
- Written
  - Under seal
    - Deed (Warranty, Quitclaim, Etc., etc.) — Signed, Sealed, Acknowledged, Delivered and Recorded.
    - Mortgage — Signed, Sealed, Acknowledged, Delivered and Recorded.
  - Not under seal
    - For purchase and sale of
      - Lands.
      - Personal property over $50.
    - Which cannot be performed in a year.
    - Guaranty.
    - Chattel mortgage.
- Sale
  - Implied warranty
    - From sample.
    - When particularly manufactured.
    - As to food.
- Bailment.
- Agency
  - General
  - Special

  — Principal and agent.
- Partnership
- Corporation
  - Public.
  - Private
    - Charter.
    - Franchise.
    - Directors.
    - Stockholders.
- Insurance
  - Fire
  - Marine
  - Life, etc.

  — Policy and premium.
- Indorsement
  - Negotiable paper
    - Promissory note (maker, payee).
    - Bill of exchange (draft)
      - At sight
      - After date

      (Acceptor).
  - Liability of indorser (presentation, non-payment, protest, notice).
- Liens.

Remedies.

- Enforce performance.
- Recover damages.

Wills and Testaments.

- Execution.
- Audition (codicil).
- Probate.

Testator and Intestate.
Executors and Administrators.

II. RELATIVE RIGHTS:

1. Husband and Wife.

- Marriage
  - Rights and duties
    - Residence.
    - Return.
    - Protection.
    - Support.
- Divorce.

2. Parent and Child.

- Duties of
  - Child
    - Obedience.
    - Service.
  - Parent
    - Protection.
    - Support.
    - Education.

3. Guardian and Ward.

- Guardian
  - Of person, — Entitled to obedience.
  - Of property
    - Must support
    - Must educate

    } from property of ward.

4. Master and Servant.

- Apprentice.
- Hired Servant.

WRONGS.

I. TORTS:

Classes.

- Slander.
- Libel.
- Fraud.
- Assault.

II. CRIMES:

Divisions.

- Felonies.
- Misdemeanors.

Criminals.

- Principal.
- Accessory.

Against State.

- Treason.
- Illegal voting.
- Bribery.
- Aiding a prisoner to escape.
- Counterfeiting.
- Forging public records.
- Perjury.

CRIMES—*Continued.*

Against Persons.

- Suicide.
- Homicide
  - Murder
    - 1st degree
    - 2d degree
      - Excusable and
      - Justifiable Homicide.
  - Manslaughter
- Assault
  - With intent
    - To kill.
    - To commit a felony.
  - and battery.
- Robbery.

Against Property.

- Arson.
- Burglary.
- Larceny
  - Grand.
  - Petit.

Against Public Decency and Morals (Bigamy).

III. ARREST:

With a warrant.
Without a warrant.

APPENDIX I

THE DECLARATION OF INDEPENDENCE

In Congress, July 4, 1776

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA

When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the Powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident: that all men are created equal, that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security.—Such has been the patient sufferance of these colonies; and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain is a history of repeated injuries

and usurpations, all having in direct object the establishment of an absolute tyranny over these States. To prove this, let facts be submitted to a candid world.

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise; the State remaining, in the meantime, exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these States; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers to harass our people and eat out their substance.

He has kept among us, in times of peace, standing armies without the consent of our legislatures.

He has affected to render the military independent of and superior to the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation :

For quartering large bodies of armed troops among us :

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these States :

For cutting off our trade with all parts of the world :

For imposing taxes on us without our consent :

For depriving us, in many cases, of the benefits of trial by jury :

For transporting us beyond seas to be tried for pretended offenses :

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies :

For taking away our charters, abolishing our most valuable laws, and altering fundamentally the forms of our government :

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is, at this time, transporting large armies of foreign mercenaries to complete the works of death, desolation and tyranny, already begun, with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

In every stage of these oppressions we have petitioned for redress in the most humble terms : our repeated petitions have been answered only by repeated injuries. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attention to our British brethren. We have warned them, from time to time, of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these

usurpations, which would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, aquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind, enemies in war, in peace friends.

We, therefore, the Representatives of the United States of America, in general Congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name, and by authority of the good people of these colonies, solemnly publish and declare, That these United Colonies are, and of right ought to be, free and independent States; that they are absolved from all allegiance to the British crown, and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved; and that, as free and independent States, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent States may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

JOHN HANCOCK.

New Hampshire—Josiah Bartlett, Wm. Whipple, Matthew Thornton.

Massachusetts Bay—Saml. Adams, John Adams, Robt. Treat Paine, Elbridge Gerry.

Rhode Island—Step. Hopkins, William Ellery.

Connecticut—Roger Sherman, Sam'el Huntington, Wm. Williams, Oliver Wolcott.

New York—Wm. Floyd, Phil. Livingston, Frans. Lewis, Lewis Morris.

New Jersey—Richd. Stockton, Jno. Witherspoon, Fras. Hopkinson, John Hart, Abra. Clark.

Pennsylvania—Robt. Morris, Benjamin Rush, Benja. Franklin, John Morton, Geo. Clymer, Jas. Smith, Geo. Taylor, James Wilson, Geo. Ross.

Delaware—Cæsar Rodney, Geo. Read, Tho. M'Kean.

Maryland—Samuel Chase, Wm. Paca, Thos. Stone, Charles Carroll of Carrollton.

Virginia—George Wythe, Richard Henry Lee, Th. Jefferson, Benja. Harrison, Thos. Nelson, Jr., Francis Lightfoot Lee, Carter Braxton.

North Carolina—Wm. Hooper, Joseph Hewes, John Penn.

South Carolina—Edward Rutledge, Thos. Heyward, Junr., Thomas Lynch, Junr., Arthur Middleton.

Georgia—Button Gwinnett, Lyman Hall, Geo. Walton.

APPENDIX II

DELEGATES TO THE CONSTITUTIONAL CONVENTION

Those with numbers before their names signed the Constitution, while those whose names are in italics were appointed delegates, but did not attend the Convention.

New Hampshire.

1. John Langdon.
John Pickering.
2. Nicholas Gilman.
Benjamin West.

Massachusetts.

Francis Dana.
Elbridge Gerry.
3. Nathaniel Gorham.
4. Rufus King.
Caleb Strong.

Rhode Island (no appointment).

Connecticut.

5. William S. Johnson.
6. Roger Sherman.
Oliver Ellsworth.

New York.

Robert Yates.
7. Alexander Hamilton.
John Lansing.

New Jersey.

8. William Livingston.
9. David Brearly.
William C. Houston.
10. William Patterson.
John Neilson.
Abraham Clarke.
11. Jonathan Dayton.

Pennsylvania.

12. Benjamin Franklin.
13. Thomas Mifflin.
14. Robert Morris.
15. George Clymer.
16. Thomas Fitzsimons.
17. Jared Ingersoll.
18. James Wilson.
19. Gouverneur Morris.

DELAWARE.

20. George Read.
21. Gunning Bedford, Jr.
22. John Dickinson.
23. Richard Bassett.
24. Jacob Broom.

MARYLAND.

25. James McHenry.
26. Daniel of St. Thomas Jenifer.
27. Daniel Carroll.
John Francis Mercer.
Luther Martin.

VIRGINIA.

28. George Washington.
Patrick Henry (declined).
Edmund Randolph.
29. John Blair.
30. James Madison, Jr.
George Mason.
George Wythe.
James McClurg (in the room of P. Henry).

NORTH CAROLINA.

Richard Caswell (resigned).
Alexander Martin.
William R. Davie.
31. William Blount (in the room of R. Caswell).
Willie Jones (declined).
32. Richard D. Spaight.
33. Hugh Williamson (in the room of W. Jones).

SOUTH CAROLINA.

34. John Rutledge.
35. Charles C. Pinckney.
36. Charles Pinckney.
37. Pierce Butler.

GEORGIA.

38. William Few.
39. Abraham Baldwin.
William Pierce.
George Walton.
William Houston.
Nathaniel Pendleton.

APPENDIX III

CONSTITUTION OF THE UNITED STATES

PREAMBLE.

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I. LEGISLATIVE DEPARTMENT.

Section 1. Congress in General.

All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. House of Representatives.

1. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

2. No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and

within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

4. When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

5. The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

Section 3. Senate.

1. The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof, for six years; and each Senator shall have one vote.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class, at the expiration of the fourth year, and of the third class, at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

3. No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

4. The Vice President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

5. The Senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the office of President of the United States.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation.

When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two thirds of the members present.

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

Section 4. Both Houses.

1. The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Section 5. The Houses Separately.

1. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy ; and the yeas and nays of the members of either house on any question shall, at the desire of one fifth of those present, be entered on the journal.

4. Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Section 6. Privileges and Disabilities of Members.

1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury

of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time, and no person holding any office under the United States, shall be a member of either house during his continuance in office.

Section 7. Mode of Passing Laws.

1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

2. Every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

3. Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Section 8. Powers granted to Congress.

The Congress shall have power:

1. To lay and collect taxes, duties, imposts and excises to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

2. To borrow money on the credit of the United States;

3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

6. To provide for the punishment of counterfeiting the securities and current coin of the United States;

7. To establish post offices and post roads;

8. To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

9. To constitute tribunals inferior to the Supreme Court;

10. To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

12. To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

13. To provide and maintain a navy;

14. To make rules for the government and regulation of the land and naval forces;

15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrection and repel invasions;

16. To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

17. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the Government of the United States, and to exercise like authority over

all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings; and

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

Section 9. Powers denied to the United States.

1. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

2. The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

3. No bill of attainder or ex post facto law shall be passed.

4. No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

5. No tax or duty shall be laid on articles exported from any State.

6. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another.

7. No money shall be drawn from the Treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

8. No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign State.

Section 10. Powers denied to the States.

1. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts;

pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

2. No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

3. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II. EXECUTIVE DEPARTMENT.

Section 1. President and Vice President.

1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected as follows:

2. Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

3. (The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Rep-

resentatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President. [*Superseded by Amendment XII.*])

4. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

5. No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty five years, and been fourteen years a resident within the United States.

6. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress may by law provide for the case of removal, death, resignation or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

7. The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

8. Before he enter on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability preserve, protect and defend the Constitution of the United States."

Section 2. Powers of the President.

1. The President shall be Commander in Chief of the army and navy

of the United States, and of the militia of the several States, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Section 3. Duties of the President.

He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Section 4. Impeachment.

The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III. JUDICIAL DEPARTMENT.

Section 1. United States Courts.

The judicial power of the United States, shall be vested in one

Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Section 2. Jurisdiction of the United States Courts.

1. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States, between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crime shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

Section 3. Treason.

1. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2. The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

ARTICLE IV. THE STATES AND THE FEDERAL GOVERNMENT.

Section 1. State Records.

Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

Section 2. Privileges of Citizens, etc.

1. The citizen of each State shall be entitled to all privileges and immunities of citizens in the several States.

2. A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

3. No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

Section 3. New States and Territories.

1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress.

2. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

Section 4. Guarantee to the States.

The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion, and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

ARTICLE V. POWER OF AMENDMENT.

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress ; provided that no amendments which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI. PUBLIC DEBT, SUPREMACY OF THE CONSTITUTION, OATH OF OFFICE, RELIGIOUS TEST.

1. All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution as under the Confederation.

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof ; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

3. The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII. RATIFICATION OF THE CONSTITUTION.

The ratification of the convention of nine States, shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

AMENDMENTS.

ARTICLE I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II.

A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

ARTICLE III.

No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

ARTICLE V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI.

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall

have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reëxamined in any court of the United States, than according to the rules of the common law.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ARTICLE XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

ARTICLE XII.

1. The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of

the government of the United States, directed to the President of the Senate; the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; the person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.

2. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

ARTICLE XIII.

1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

2. Congress shall have authority to enforce this article by appropriate legislation.

ARTICLE XIV.

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty,

or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each house, remove such disability.

4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV.

1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

2. The Congress shall have power to enforce this article by appropriate legislation.

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